

Testimony Presented by Minister Jeff Mansfield, Community Minister, Judson Memorial Church

Dear City Council Members,

I am writing to you today to provide you my testimony, as both a restaurant worker and a minister in New York City, in favor of the Responsible Restaurant Act.

As leaders engaged in this community, we all know how increasingly important the restaurant industry is to New York City. A law of this kind is needed to protect the integrity of the health and economy of this great city.

You have undoubtedly seen the research presented to you which proves the intuitive conclusion that restaurants which cut corners when it comes to following labor laws also cut corners when it comes to following health and safety standards. Discrimination and wage theft are as much indicators of poor health conditions in a restaurant as are rat droppings behind the stoves.

The health of our city is also affected when one of our key industries is operating without adequate safeguards to the financial welfare of its workforce. When our workers, our neighbors, congregants, and constituents, are not, for instance, being paid minimum wage or overtime, they have hundreds, even thousands, of dollars less every year with which to pay for doctor's visits, medicine, or a new winter coat for themselves and for their families. In terms of our economy, we know that the less money New Yorkers have to spend, the poorer our neighborhoods and our local businesses fare.

I can tell you from first hand experience that abused workers whose rights are not being respected are more likely to act unprofessionally on the job. Disgruntled workers are less likely to wash their hands as often as they should and more likely to pick a piece of food up off the floor and place it back on a plate before it goes out to a guest. Increasingly exploited workers will not have the professional strength or desire to maintain New York City, the restaurant capital of the world, as a competitive destination for lovers of fine food and fine service.

The Responsible Restaurant Act will keep a check on the most egregious of the industry's corner-cutters, will assist in maintaining the health and consumer power of the city's service workforce, and will help ensure that New York City remains a world leader in fine dining by making sure its service workers are fairly empowered by a sense of professionalism in their work and pride on the job.

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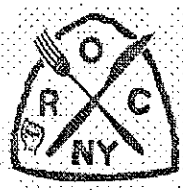
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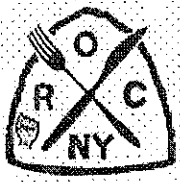
Testimony Presented by Joanna Zepeda to the New York City Council Hearing on Responsible Restaurant Act (Intro #569)

My name is Joanna Zepeda and I am a restaurant worker and a member of ROC-NY and I live in Astoria, Queens. I have been working in the restaurant industry for over ten years and for the last three years. I was employed as a server at Trattoria Del 'Arte, a very popular fine-dining restaurant frequented by some well known celebrities and a wealthy clientele. During my time there I was a victim of rampant sexual harassment, gender and racial discrimination, as well as witness to multiple health code and labor violations.

Instead of paying their managers appropriate wages the restaurant group misappropriated some of the workers' tips to supplement the managers' low wages. Servers were responsible for paying for each credit card transaction processing fee, which really is the responsibility of the merchant, meaning the restaurant.

They not only violated our employment rights, but also operated an unhealthy and unsanitary restaurant. On three separate occasions, roaches ended up in patrons' glasses as a result of infestation in the ice machine. On one particular Valentine's Day the restaurant ran with no hot water, and, although I informed management of this, there was no action taken.

I believe that The Responsible Restaurant Act should be passed because restaurant workers, just as much as anyone else, should have the right to work with the confidence that their employer will not violate BASIC employment laws. In most other industries employers are accountable when they break the law and its time that we acknowledge the importance of the restaurant industry too. The city needs to meaningfully encourage restaurant owners to take responsibility for their wrongdoings as well.



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April 2006

DINING OUT, DINING HEALTHY:

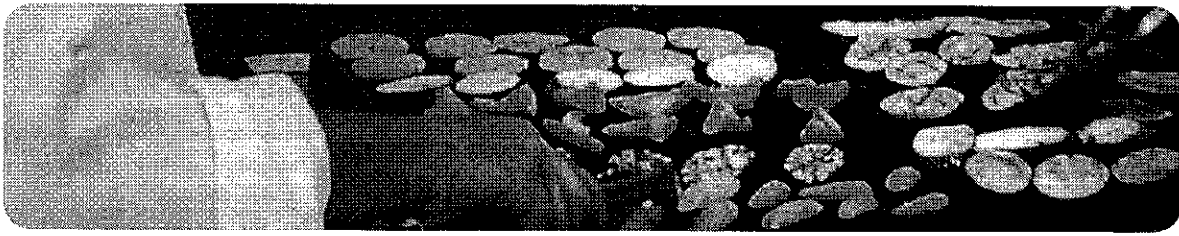
The Link Between Public Health and Working Conditions in New York City's Restaurant Industry



**By the Restaurant Opportunities Center of New York (ROC-NY) and
the New York City Restaurant Industry Coalition**

**Primary research support provided by the
Community Development Project of the Urban Justice Center**

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Brennan Center for Justice at NYU School of Law**



EXECUTIVE SUMMARY

New York City's restaurants are vital to our economy. But there is a growing problem that is threatening to undermine the vitality of the industry: restaurant owners that maintain bad dining and working conditions, thereby putting the public's health at risk.

In this report, we show that restaurant employers who violate labor laws – for example, by paying less than the minimum wage or failing to pay overtime – present a serious danger to the public health. That's because these employers are pursuing a “low-road” business strategy, which depends on putting enormous pressure on workers and cutting costs on training and wages. The result is a set of workplace practices that endanger food safety, and therefore, the public health.

Our findings are based on two surveys of a total of 880 restaurant workers in New York City, conducted between June 2003 and February 2005. In these surveys, we compared restaurant workers who experienced many labor law violations at their job to those who experienced few labor law violations.

We found that workers who experienced many labor law violations were:

- Six times more likely to report that they frequently had to cut corners because of time pressures, in ways that might have harmed the health or safety of customers.
- Twice as likely not to receive health and safety training from their employer.
- Three times more likely to report that they frequently had to perform several jobs at once.
- Three times more likely to report that they frequently had to work when their restaurant was understaffed.
- Four times more likely to report that they frequently had to do a job for which they weren't trained.

These low-road business practices were strongly correlated with reports by workers that they had to engage in unsafe food preparation, including:

- Serving dirty, expired, spoiled or leftover food to a customer
- Handling food improperly
- Sneezing, coughing or spitting on food

Finally, analysis of official data from the New York City Department of Health and Mental Hygiene confirms the close connection between health code violations and unsafe workplace practices on the one hand, and labor law violations on the other.

In response, the New York City Restaurant Industry Coalition calls for public policies to promote good workplace practices in the restaurant industry. We must ensure that employers who have been adjudicated for violating labor and health and safety regulations – and who are therefore putting the consumer at risk – are not able to continue business as usual. Such policies will help the restaurant industry become a safer, more transparent, and ultimately stronger part of New York City's economy.



INTRODUCTION

New York City's restaurants are vital to our economy. Millions of visitors and residents frequent the City's cafes and restaurants every week, drawn by the promise of a world-class dining experience. Tens of thousands of workers, many of them immigrants, keep the industry running and depend on the jobs to support themselves and their families.

But there is a growing problem that is threatening to undermine the vitality of the industry: restaurant owners that maintain bad dining and working conditions, thereby putting the public's health at risk. Almost all New Yorkers have a story about the time they became seriously ill after eating out. As we will see, this is no accident.

Over the last three years, the New York City Restaurant Industry Coalition has conducted on-going and comprehensive research on the city's restaurant industry. The study demonstrates that restaurant owners who violate labor laws are also likely to violate health and safety code standards. These "low-road" owners are putting the safety of the public at risk by overworking their employees, pushing them to cut corners, asking them to do jobs for which they were not trained, and not providing basic health and safety training.

Action is clearly needed. In order to protect the health and safety of both customers and workers – and the vitality of the sector overall – the Coalition calls for public policies that promote good workplace practices in the restaurant industry.

In what follows, we present findings from several surveys of restaurant workers carried out between June 2003 and February 2005, resulting in a total sample of 880 workers from New York City. Our first survey of 530 workers, conducted during the summer and fall of 2003, explored the link between labor law violations and unhealthy workplace practices, such as understaffing, lack of training, forcing workers to juggle multiple jobs simultaneously, and other practices that push workers to cut corners that might harm themselves and the customer. Our second survey, carried out during July 2004 and February 2005 with 350 workers, further explored the implication of these "low-road" workplace practices for the health and safety of the consumer.

As reported in the New York Post in August 2004, stressful workplace environments and irresponsible practices in restaurants can have gruesome implications for the consumer. The August 23rd article reports a woman who bit into a fingertip while eating a salad ordered from an upscale mid-town establishment. The worker who had prepared the salad had cut his finger on the job, but was apparently unable to properly care for the injury or stop working. The restaurant was charged with negligence and the case was settled before trial soon after the article came out.

NEW YORK POST

WHAT WE FOUND: LOW-ROAD EMPLOYERS PUT THE PUBLIC'S HEALTH AT RISK

Our research shows that restaurant employers who violate basic labor laws present a serious danger to the public health. These employers are pursuing a “low-road” business strategy, which depends on putting enormous pressure on workers and cutting costs on training and wages. The result is a set of workplace practices that endanger food safety, and therefore, the public health.

The following sections highlight various measures of unhealthy workplace practices in New York City restaurants and the impact that these have on workers and consumers alike. We also draw on interviews with workers and employers to illustrate the real-life effects of low-road business practices, as well as the feasibility of alternative, “high-road” practices in the industry. Finally, we illustrate how official data from the New York City Department of Health and Mental Hygiene support our findings, and identify concrete steps that can be taken to improve the industry for both workers and consumers.

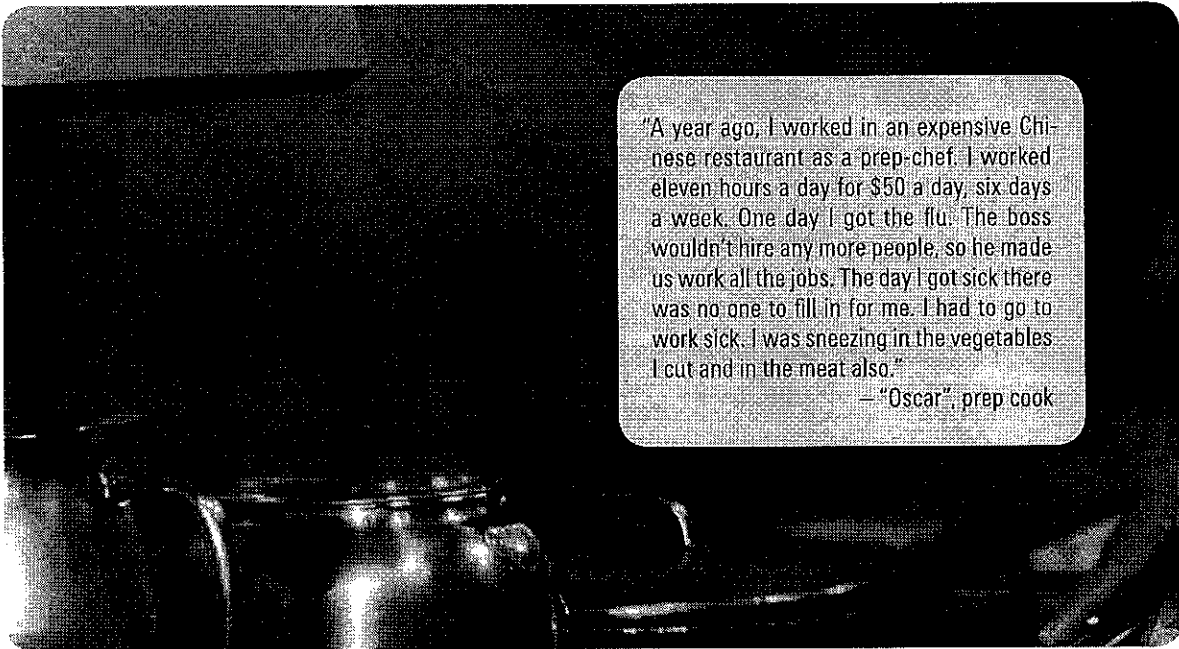
How we measure labor violations in restaurants:

The restaurant workers we surveyed reported the number of times they had experienced a labor violation at their job. We asked about the following specific labor violations:

- The employer paid the worker less than the minimum wage.
- The employer failed to pay overtime for work over 40 hours a week.
- The employer discriminated against the worker on the basis of race, ethnicity, gender, age, sexual orientation, language, immigration status, religion or politics

We then divided our sample into several groups of workers, based on the number of violations they experienced at their restaurant. In this report, we focus on workers who experienced:

1. **Many labor violations** (30% of the sample)
2. **Few labor violations** (38% of the sample)



"A year ago, I worked in an expensive Chinese restaurant as a prep chef. I worked eleven hours a day for \$50 a day, six days a week. One day I got the flu. The boss wouldn't hire any more people, so he made us work all the jobs. The day I got sick there was no one to fill in for me. I had to go to work sick. I was sneezing in the vegetables I cut and in the meat also."

— "Oscar", prep cook

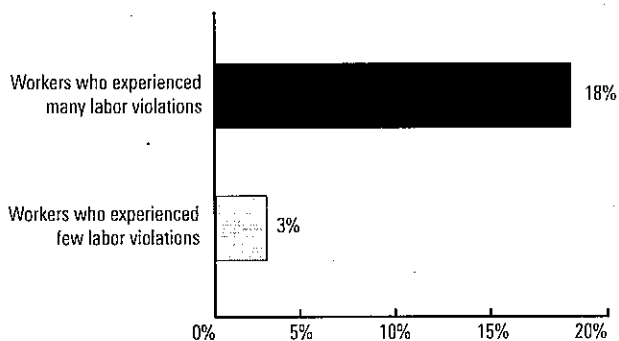
1. Pressure to cut corners, with potential harm to the customer

Restaurant workers who are under intense time pressure understand that cutting corners can put the public health at risk. But they often have little choice – especially when working at a restaurant where the employer is routinely violating standards, including labor laws.

In our survey, we asked workers how often they were forced to cut corners that might have harmed the health and safety of customers. As Figure 1 shows:

- Of workers who experienced many labor violations, 18% said that they frequently had to cut corners because of time pressures in ways that might have harmed the health or safety of customers.
- That's six times the rate (3%) for workers who experienced few labor violations.

Figure 1: Percent of workers that report having to frequently cut corners that might harm the health or safety of customers



Source: ROC 2003/04 Survey

2. Lack of health and safety training

Health and safety training is absolutely critical for workers who handle and prepare food. Cooks need to learn at which temperatures to heat food, and how to safely store and refrigerate it. Food preparers need to learn how to use cutting machines in order to avoid injuring themselves and possibly contaminating food. And dishwashers and cleaners need to learn how to maintain sanitary conditions and handle volatile cleaning solutions. Clearly, this type of knowledge is vital to food safety, and ultimately, the public's health.

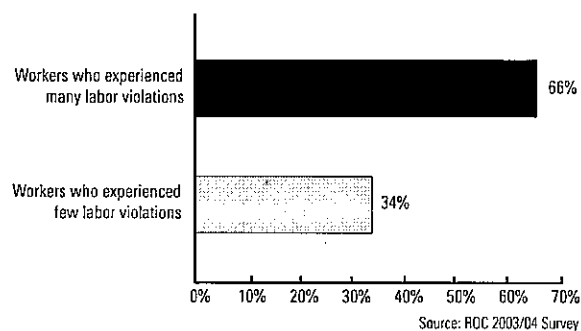
But employers who violate labor laws typically do not invest in health and safety training for their employees. As Figure 2 shows:

- Of workers who experienced many labor violations, 66% said that they did not receive health and safety training from their employer.
- That's almost twice the rate (34%) for workers who experienced few labor violations.

"When I was working in my restaurant, I saw a friend cut off a piece of his finger and keep working because the assistant chef made him, told him it was nothing. He told him to put a Band-Aid on and keep working. The accident happened because there weren't enough employees and the worker wasn't trained to be a salad man. They never trained him, so he cut himself. Even though he was bleeding, he kept serving salads and I was in anguish knowing that the customers would find a piece of his finger in their salad. It hugely affects the health of the client."

—"Angelina," pastry maker

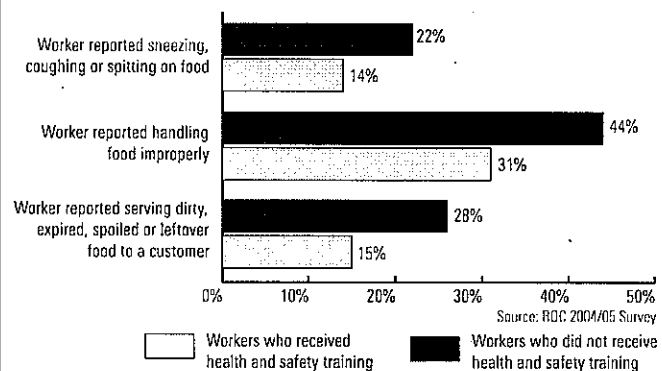
Figure 2: Percent of workers that report lack of health and safety training from their employers



Employers who do not provide health and safety training for their workers are putting the public's health at risk. Workers who do not receive health and safety training often engage in unsafe practices because they are not armed with the proper information. As Figure 3 shows:

- Of workers who did not receive health and safety training, 44% reported handling food improperly, as compared to 31% who did receive training.
- Workers who did not receive health and safety training were nearly twice as likely to both sneeze, cough, or spit into food and to serve dirty, expired, spoiled, or leftover food to a customer.

Figure 3: Implications of lack of worker health and safety training for consumer health



An Upper West Side Restaurant Mistreats Its Workers and Puts the Public's Health at Risk

In-depth interviews with workers from a small Upper West Side restaurant illustrate how employers who violate labor laws and engage in irresponsible workplace practices force their workers to cut corners and work under unhealthy conditions, with serious and detrimental implications for the public. The restaurant was investigated by the New York State Attorney General's office and violations of the minimum wage and overtime laws were found. At the same time, workers reported that they were forced to engage in practices that put the public's health at risk. For example, waitresses from this restaurant described being forced to work even while sick with the flu. "B" explains that

I have no choice but to work when I am sick. One time I was unable to talk because my throat was so bad and I had a high temperature. I was taking customer orders and I had to run to the kitchen to drink water to avoid coughing in front of the client. I am in constant contact with the food served and I prepare the drinks. When I am sick, it is impossible to avoid sneezing in or around the drinks.

Similarly, kitchen workers such as cooks and dishwashers report that the fast pace and understaffing of the kitchen leads to many accidents that go untreated. For example, "S" reports that several workers who were cut or hurt on the job were told by their employer:

... to just to put a glove on and continue working, even when the glove filled up with blood. The blood inevitably gets into the food that is served. This is bad hygiene and can make the customer sick.

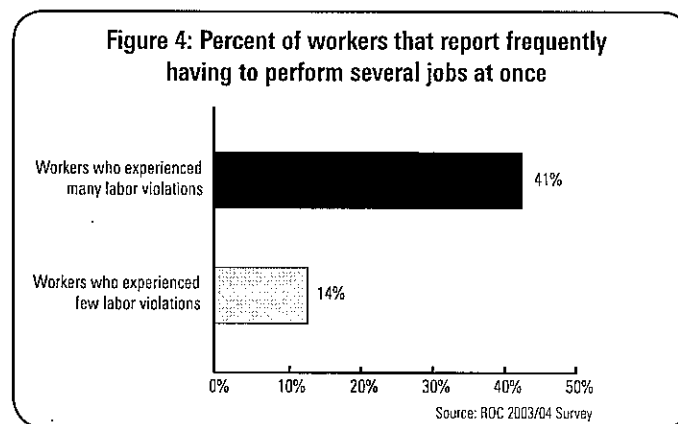
Such horrifying stories are the everyday reality in restaurants that are violating labor laws and putting the public's health at risk.

3. Pressure to perform several jobs at once

Another threat to the public health occurs when workers are forced to do several jobs at once. For example, employers may order a dishwasher with no knife or cooking experience to help with cooking. They might force a junior cook to take over as lead cook, or have workers repair machines or clean the kitchen while they are still doing their principal task. This kind of overload can easily lead to cutting corners – like not wearing gloves or not storing cleaning agents away from the stove – that, in the end, hurt food safety for customers.

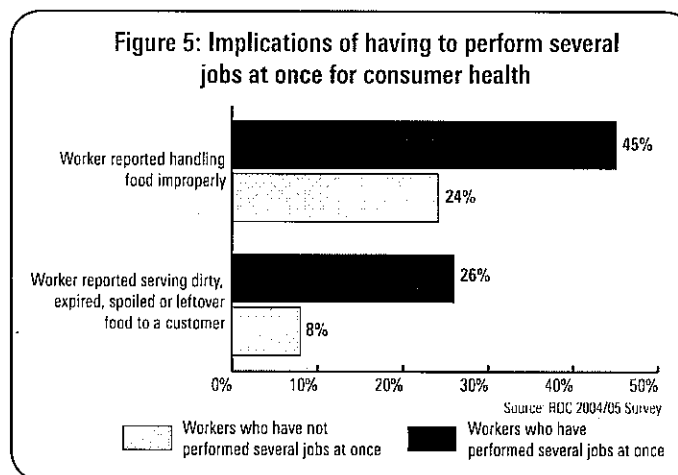
Yet employers who violate labor laws often require their workers to do several jobs at once. As shown in Figure 4:

- Of workers who experienced many labor violations, 41% said that they frequently had to perform several jobs at once.
- That's three times the rate (14%) for workers who experienced few labor violations.



Employers who are forcing their workers to juggle several jobs at once are putting their customers in danger. As Figure 5 shows, workers who have to perform several jobs at once are more likely to handle food improperly and serve bad food to customers:

- Of workers who reported having to perform several jobs at once, 45% said that they had handled food improperly
- 26% of workers who had to perform several jobs at once reported serving bad food to customers, compared to only 8% of workers who did not have to juggle several different jobs.

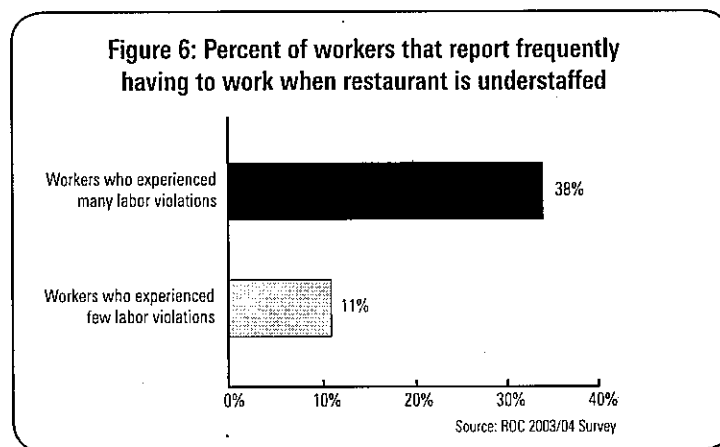


4. Chronic understaffing

Chronic understaffing is another common way for restaurants to save on labor costs. But when frantic workers barely finish one task before running to the next, it's food safety that suffers – an ingredient that was dropped on the floor is thrown back in the pot, cooks re-use utensils without cleaning them, workers cut themselves but do not have the time to clean and bandage the injury. That's why employers who care about the safety of both their workers and customers make sure to staff their restaurants adequately.

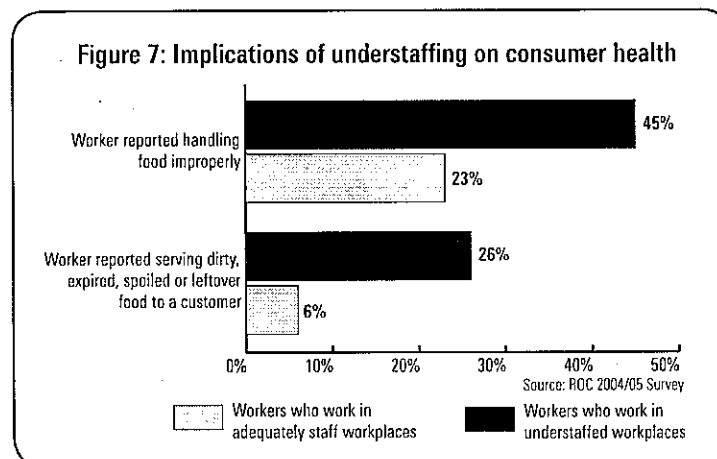
By contrast, employers who violate labor laws are much more likely to be understaffed. As Figure 6 shows:

- Of workers who experienced many labor violations, 38% said that they frequently had to work when the restaurant was understaffed.
- That's more than three times the rate (11%) for workers who experienced few labor violations.



When employers do not hire enough staff for their restaurant, workers are forced to engage in unsafe practices. As shown in Figure 7:

- Workers in understaffed restaurants were almost twice as likely to handle food improperly, compared to workers in fully staffed restaurants.
- 26% of workers in understaffed restaurants report having served bad food to customers, compared to only 6% of workers in fully staffed restaurants.





Prominent Restaurant Group Demonstrates a High Road for the Industry

Tom Colicchio, Chef and owner of Craft Restaurants, a prominent restaurant group in New York City, has worked hard to transform the restaurant industry by creating a professional environment where employees have an opportunity to build a career rather than just fill temporary employment needs. The establishment presents opportunities for job growth and encourages employees to approach management when they are ready to advance. Longevity has benefits for the restaurant as well. Human Resource Manager Paul Salkind argues that long-term employees are more committed to maintaining high standards at Craft and its sister restaurants, including Craftbar, Wichcraft and Craftsteak. Longevity is promoted in several ways. Among these are the provision of health benefits, dental plans, transportation reimbursements, dining vouchers, and paid vacation for all employees.

Keeping a well-trained staff and minimizing turnover also has tangible benefits for customers. As Paul notes, workers are more likely to make mistakes that affect the safety of the food served and the health of the diner if they are not adequately trained. The same principle holds true when workers are cramped or rushed. For these very reasons, Craft is committed to providing sufficient training, a spacious and hygienic kitchen, and adequate staffing at all times.

In sum, Craft believes that maintaining high standards for the health and well-being of its employees is, in fact, what has enabled the continued success of its restaurants.

5. Lack of job-specific training

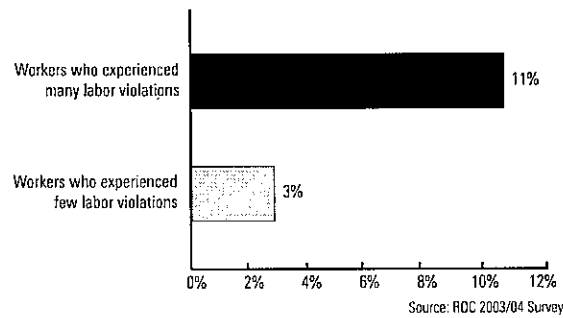
All positions in a restaurant require skills, and workers usually learn those skills while on the job. Cooks have to learn a myriad of rules about preparing specific dishes, dishwashers have to learn about the restaurant's machines, waiters have to learn how to juggle multiple plates and cups without hurting themselves and their customers. Restaurant employers who care about food safety realize that it takes time to learn these skills, and therefore invest in training before letting workers take on a job that is new to them. But employers who violate labor laws are less scrupulous, and are more likely to force workers to do jobs for which they were not trained. As shown in Figure 8:

- Of workers who experienced many labor violations, 11% said that they frequently had to do a job for which they weren't trained.
- That's almost four times the rate (3%) for workers who experienced few labor violations.

"A few years ago, I worked as a salad maker at an Italian restaurant. The dishwasher cut himself with a glass and kept washing the plates. The plates were stained with blood. They kept using the plates though and it put the customers' health at risk. There was so much pressure on him from the chef and manager. At that moment everyone was totally busy. We had no choice. I didn't eat dinner that night because he dirtied everything he touched."

— "Juan," salad maker

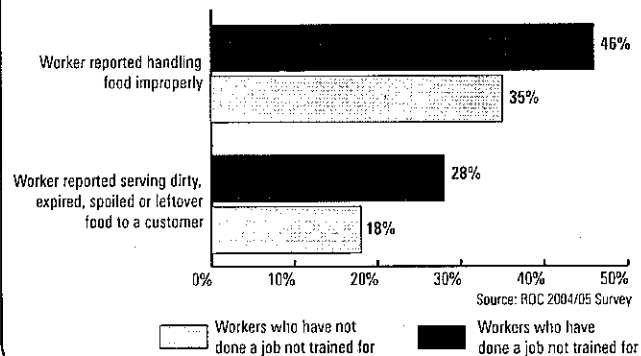
Figure 8: Percent of workers that report frequently having to do a job for which they were not trained



Employers who force their workers to do jobs for which they are not trained are effectively causing their workers to engage in unhealthy and unsafe practices. As Figure 9 shows:

- Workers who had done jobs for which they were not trained were more likely to handle food improperly
- Workers who had done jobs for which they were not trained are were also more likely to serve bad food to a customer.

Figure 9: Implications of lack of job-specific training on consumer health



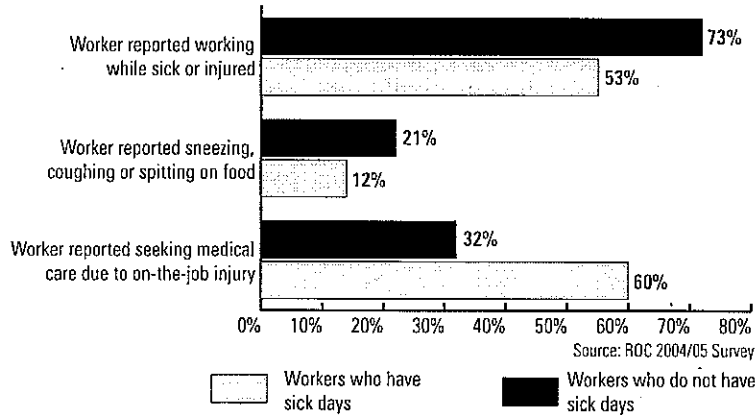
Implications of the Lack of Health Benefits for Consumer Health

The vast majority of restaurant employers do not provide health-related benefits, such as health insurance or paid sick days, for their employees. The lack of these benefits for workers has serious implications for the health of the consumer. No sick days means that workers have to choose between coming to work sick and forgoing a critical day's wage to stay at home to recover or see a doctor. In addition, without health care, accessing necessary medical attention or medicine to prevent illness or treat it when it occurs is often impossible. When workers get sick, they are left with few choices. Because they are not allowed to take time off or cannot afford to, they are forced to work while sick. Our research illustrates the risks of not providing sick days and health insurance to workers for the customer.

- 72% of workers who did not receive sick days reported working while sick compared to 58% of workers who did receive those benefits.
- Nearly double the number of workers (21%) who do not receive sick days reported sneezing, coughing, or spitting in food as compared to those who did receive sick days (12%).
- Almost half the number of workers without sick days sought medical care (32%) due to an on-the-job injury compared to workers who did receive sick days (60%). Workers who receive health insurance were more than twice as likely to seek medical care (62%) as workers who do not receive health insurance (29%).

Source: ROC 2004/05 Survey

Figure 10: Implication of not providing paid sick days to workers for consumer health





Government data supports the link between labor and health code violations

Data from the New York City Department of Health and Mental Health (DOHMH) support our survey findings showing that low-road employers put the public's health at risk. Over 300 workers surveyed provided us names of the restaurants where they worked. Of those, we were able to identify the health code violations as reported by DOHMH inspectors (available on the Department's website) for 197 of them. We found that employers who violated labor laws were also likely to have been charged with the following critical health code violations: (1) Live animal present in food storage, preparation or service area, including but not limited to, cockroaches, flies, mice, rats, cats, and dogs; (2) Live flies/other insects present in facility; (3) Cooked or prepared food cross-contaminated; (4) Cold food held above 41°F except during necessary preparation; (5) Canned food product swollen, leaking, rusted, severely dented; and (6) Sanitized equipment or utensil, including in-use food dispensing utensil, improperly used or stored.

THE SOLUTION: PUBLIC POLICIES TO PROMOTE HEALTHY WORKPLACE PRACTICES IN THE RESTAURANT INDUSTRY

Our study has shown that restaurant owners who violate labor laws are also endangering the public by relentlessly cutting corners, overworking their employees, and not providing basic health and safety training. In other words, restaurant owners who violate labor laws put the public's health at risk.

In response, the New York City Restaurant Industry Coalition calls for public policies to promote good workplace practices in the restaurant industry. We must ensure that employers who have been adjudicated for violating labor and health and safety regulations are not able to continue business as usual. Such policies will help the restaurant industry become a safer, more transparent, and ultimately stronger part of New York City's economy.

ABOUT OUR STUDY

From June to November of 2003, the New York Restaurant Industry Coalition conducted an initial survey on workplace practices of 530 restaurant workers in New York City. From July 2004 through February 2005, we conducted a second survey on consumer health implications of bad workplace practices with 350 workers. On both occasions, workers were surveyed on subways, in their neighborhoods, in the vicinity of restaurants during breaks or at the end of shifts, and inside the restaurants themselves. While the two resulting samples are not strictly random, we have confirmed with government data that they reflect the industry as a whole, in terms of the types of restaurants, workers and occupations they capture.

The goal of the two surveys was to examine the relationship between workplace practices and public health in the City's restaurants. These practices include health and safety training, job-specific skills training, and wage and hour practices, as well as practices that create stressful workplaces, such as understaffing and making workers juggle multiple jobs at once. All practices were reported by the workers themselves (in particular, see the sidebar for our measure of labor violations).

The two surveys were supplemented by analysis of secondary industry data, in-depth worker interviews, and analysis of restaurant inspection reports and other data obtained from the New York City Department of Health and Mental Hygiene (NYC DOHMH).

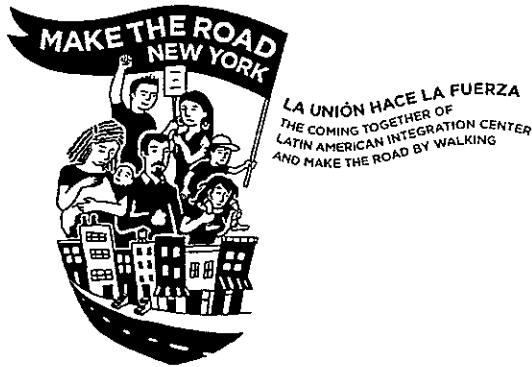
NEW YORK CITY RESTAURANT INDUSTRY COALITION:

Brennan Center for Justice at NYU School of Law
Dr. Steve Markowitz, Center for the Biology of Natural Systems, Queens College
Center for Immigrant Health, New York University Medical School
Commission for the Public's Health System
Community Service Society
CUNY Law School Main Street Legal Services
Dr. Manny Ness, Brooklyn College, CUNY
Fiscal Policy Institute
UNITE HERE Local 100
Instituto de Salud y Sociedad Inc.
Latin American Integration Center
National Coalition for Asian Pacific American Community Development
National Employment Law Project (NELP)
New York Committee for Occupational Safety & Health (NYCOSH)
New York Immigration Coalition
New York Jobs With Justice
Restaurant Opportunities Center of New York (ROC-NY)
UFCW Local 1500
Urban Justice Center, Community Development Project

For More Information:

Restaurant Opportunities Center of New York
99 Hudson St., 3rd Floor New York, NY 10013
Tel: (212) 343-1771 Fax: (212)-343-7217
www.rocny.org





Testimony of Irene Tung on the Responsible Restaurant Act

*Presented to the Health Committee of the New York City Council
March 31, 2008*

My name is Irene Tung and I am the Director of Organizing for Make the Road New York. I thank the Health Committee for this opportunity to present testimony about Intro 569, the Responsible Restaurant Act.

Make the Road New York is a membership organization that promotes economic justice for all New Yorkers through community and electoral organizing, strategic policy advocacy, leadership development, youth and adult education, and legal and support services. The majority of our 4,000 members are immigrants.

Over the past several years, our Workplace Justice Project has worked with hundreds of restaurant workers in New York City to improve working conditions and win hundreds of thousands of dollars in back wages through organizing and legal advocacy.

What we've seen time and time again from the workers that come through our doors every day is that as long as New York restaurants are allowed to do business even if they violate federal and state employment law, it will be a race to the bottom with regard to wages and working conditions for restaurant workers.

We've also heard from workers that many restaurants think of back pay claims merely as one of costs of doing business. They routinely underpay their workers knowing that most workers won't bring claims. If, once every few years, a few workers are actually courageous enough to bring claims, the owners will pay them off. Then, its business as usual, again.

The Responsible Restaurant Act will require restaurant owners to report employment law violations to the Department of Health when applying for a City Operating Permit. Under the Act, the Department will publish reports of these violations on their website. The public will then be able to comment on these violations and even request a public hearing. The Health

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Department may then decide to renew, suspend, or revoke the license, or set up ongoing monitoring of the restaurant's compliance with the law.

Passing this bill will go a long way towards bringing New York City's immigrant restaurant workers out of the shadows. It will also allow them contribute even more to New York City's economy. Having a good job that enables one to support a family means having the opportunity to own a home, opportunities to save for the future, and the ability to provide a good education, including a college education, for one's children. All of these things are the foundation for a stable and prosperous New York City.

For these reasons, I urge you to pass Intro 569. Thank you.



LA UNIÓN HACE LA FUERZA
THE COMING TOGETHER OF
LATIN AMERICAN INTEGRATION CENTER
AND MAKE THE ROAD BY WALKING

Testimony of Antonio Ramirez Member of Make the Road New York

Good Afternoon, My name is Antonio Ramirez and I am member of Make the Road New York and live in [borough/neighborhood]. I worked at Ondal Korean Restaurant, located in Flushing, Queens for four months in 2007. I worked seventy two hours a week, which included cooking, cleaning and serving the clients their food. Even though the employer was paying me less than minimum wage, whenever I demanded my wages she got upset. I had to quit the job because I was backed up in rent. The last two weeks that I worked they chose not pay me so I had to go personally several times to demand the wages they owed me. Now the employer owes me tens of thousands of dollars in unpaid wages. If the employer knew that they might lose their permit from the City, they would be more likely to pay me the wages they owe. It's very important that the City Council pass the Responsible Restaurant Act because many employees in restaurants are going through similar situations. The Responsible Restaurant Act would get help improve working conditions in the restaurant Industry.

Thank you.

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The Small Business Congress, Inc.

United with a Goal of Creating a Healthy Small Business Environment in New York City

146-03 34th Avenue, Flushing, NY 11354

Tel: (718) 886-5567 Fax: (718) 886-5535

E-mail: smallbusinesscongress@yahoo.com

FOR THE RECORD

TESTIMONY

PUBLIC HEARING ON INTRO #569A, "RESPONSIBLE
RESTAURANT ACT OF COMMITTEE ON HEALTH, NYC
COUNCIL, MARCH 31, 2008, COUNCIL CHAMBER

PRESENTED BY

SUNG SOO KIM
PRESIDENT
THE SMALL BUSINESS CONGRESS, INC.

Chairman Rivera and Councilmembers. My name is Sung Soo Kim, President of The Small Business Congress, Inc., a federation of City's 70 trade organizations. On behalf of the Congress, I am registering the Congress' opposition to Intro #569A. The bill is ilconceived, myopic, onesided, ideologically tinted, and a categorical killer to the survival of 26,000 food service establishments in New York City.

The legislative intent of Intro #569A is self-explanatory and addresses a message that should be applied to all business sectors, but the bill exclusively singles out the food service establishment. The collectivity of 26,000 food service establishments in the City as the bill asserts is an important business sector which not only directly impacts "the health and welfare of millions of New Yorkers," but also provides No.#1 source of jobs and tax revenues. The point is that the bill is a categorical killer to the survival of this important business sector by providing leverage to threaten in many cases with controversial sources and with a past five year Labour Law violation record though corrected to authorize NYCDOH &MH and its Commissioner to revoke the Health Permit and to refuse its renewal. This is a double jeopardy and a massacre. ~~Intro #569A is a Gestapo bill.~~

The existing measurement for Commissioner to revoke a permit is seriously cautious and of due process. DOH &MH records 2 or 3 consecutive failures of inspection on food sanitary conditions, sends out a notice of final inspection and warning via certified. If a permittee fails in this final inspection, Commissioner issues an order to close the premises. With pr@of of corrections, or in some cases additionally through an Oath Hearing, the establishment is authorized to reopen. Failure in the following inspection leads to permit revocation.

Intro #569A is to authorize Commissioner to exercise his additional external power as a Super Labour Law agent to review a past 5 year labour law violation record of a permit applicant and to receive a complaint and open a hearing for revoking a permit or denying the renewal. There is no makeup remedy for surviving the permit. Intro #569A leads to a death sentence to a food service establishment which was and is charged with labour law violations with no appeal chance.

Practice of labour law enforcement is much controversial. Agents visit a store, interview with employees, create a recapitulation of claims for unpaid wages based on books, interviews and surveillance which are much assumptive and in most cases settle the charges through a reconciliation conference. Store's book-keeping is not 100% clear out of mis-computation and argument over meal credits and waiting hours. Arguments transpire over employer's store disciplinary codes.

Intro #569A reminds us of the Indebtedness Bill of 1994 which was vetoed by the Governor. By this bill, the City tried to collect defaulted fines by revoking any license or permit a business holds. SBC appeals to the Council and advocates for Intro #569A

to drop this one-sided confrontational bill and to find out a fair and reasonable solution for securing both survival of food service establishment community and Workers' Rights.

The Small Business Congress would submit to this Committee a historical example, The Greengrocer Code of Conduct Program of 2002, which has been effectively operating in caring for both employee and employer. The program initiated by the Attorney General of the State of New York pardons the employee for the past labour law violations but educates the employee with a swearing that the employee thoroughly abide by all the required Labour Codes. (enc.) Lastly, I believe Prevention rather than Cure with Penalty is a recommendable style of Governance.



New York Workers' Rights Board

A Project of NY Jobs with Justice

Catherine M. Abate,
Community Healthcare Network
Lisa Adonis,
El Puente
Sal Aldress, Esq.,
Carraker & Associates
Khoren Aghian,
NY Society of Ethical Culture
Prof. Stanley Atonowicz,
CUNY Graduate Center
Martha Baker,
Non-Traditional Employment for Women
Rev. Dr. Luis Barrios,
Iglesia San Romero de las Americas
Monsignor Howard Baker,
Catholic Charities, Brooklyn Diocese
Dennis Bell,
NYU Law School
Prof. Howard Berliner,
New School University
Nancy Bideman, Esq.,
Women's Housing & Econ. Dev. Corp.
Hon. Gale Braver,
NYC City Council
Bellefleur Brown,
Stephen Wise Free Synagogue
Rev. Robert W. Castele,
St. Mary's Episcopal Church
Rockwell J. Chin, Esq.,
Nat'l Asian Pacific American Bar Assoc.
Esther Cohen,
Bread & Roses Cultural Project,
Ron Daniels,
Center for Constitutional Rights
Linda Stone Davidson,
Citizens Union
Barnavi Dasa,
New York Taxi Workers' Alliance
Rev. John Duffel,
Roman Catholic Church of the Ascension
Jay Dunston,
Central Bklyn' Neighborhood Empl'or. Cr.
Rev. David Dyson,
Lafayette Ave. Presbyterian Church
Eugene G. Elener, Esq.,
Elener & Husband, P.C.
Arlene Einerman,
Metro NY Disabled in Action
Prof. Joseph Falvey,
Manhattan College
Angelo Falcon,
Institute for Puerto Rican Policy, Inc.
Rabbi Michael Fairbard,
New York Labor Religion Coalition
Sister Ailene Fishery,
Intercommunity Ctr for Justice and Peace
Margaret Fung,
Asian American Legal Def. & Ed. Fund
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NYS Assembly
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LaGuardia Community College
Hon. Rhoads J. Jacobs,
NYS Assembly
David Jones,
Community Service Society
Father Brian Jordan,
St. Francis de Assisi
Prof. Sharyn Kasmin,
Holista University
Prof. Robn D.G. Kelley,
New York University
Rev. James Kelly,
St. Brigid's Church
Thomas M. Kennedy, Esq.,
Kennedy Schwartz and Gura, P.C.

November, 2002

Dear Greengrocer Owner:

I write to invite you to participate in an exciting new initiative led by the Attorney General of New York State. This program is designed to ensure long-term success and competitiveness of New York City small retail food stores, often called greengrocers, while at the same time improving working conditions for those employed in this industry.

As a greengrocer owner, you know this is a tough business. Competition is fierce. Both owners and employers work long hours. And government regulations and labor laws are complex and difficult to navigate.

In fact, many employers in this industry, either on purpose or through ignorance, regularly violate labor laws. Workers are often paid \$250-\$350 per week for 72 hour workweeks – in direct violation of U.S. labor law. In the last three years, the Attorney General of New York has prosecuted many New York City greengrocer owners for these violations, obtaining hundreds of thousands of dollars in compensation for past violations of the law.

In an effort to help greengrocers end their violations of U.S. labor law, without having to pay such a high price for past violations, the Attorney General, in collaboration with the Korean American Association of Greater New York, Casa Mexico and other groups representing greengrocer workers has developed the Greengrocer Code of Conduct. The Code applies to any retail food store of under 15,000 square feet.

Employers who sign the Code of Conduct agree follow New York State labor law – pay at least minimum wage and overtime. They agree to provide some vacation and sick time. And employers must submit to monitoring of minimum wage compliance by an independent third party.

Charles Karmaghan,
National Labor Committee
Rev. Earl Koopariamo,
Church of the Intercession
Hon. Le Krueger,
New York State Senate
Rev. Peter Laerman,
Judean Memorial Church
Bred Lander,
Fifth Avenue Committee
Dr. Rafael Lantigua,
Alfonso Dominguez
Kathy Leisher,
Anti Leaf Productions
Eleanor Lewis,
NYS Council of Senior Citizens
Hon. Margarita Lopez,
New York City Council
Larry Magarik, Esq.,
Kennedy, Schwartz & Gura, P.C.
Lola Marbach,
Queens Coal. for Political Alternatives
Rabbi J. Ricardo Matos,
Congregation B'nai Jehonatan
Margaret McHugh,
New York Immigration Coalition
Hon. Brian McLoughlin,
NYS Assembly
Ruth Meadlough,
American Jewish World Service
Prof. Toby Miller,
New York University
Rev. Dr. Timothy Mitchell,
Ebenezer Masonry Baptist Church
Prof. Terry Mizell,
Hunter College School of Social Work
Fran Nicols,
Cornell Institute for Women and Work
Winnaruel Neas,
Brooklyn College, CUNY
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NYS Assembly
Hon. Mark R. Owens,
US House of Representatives
Prof. Frances Fox Piven,
CUNY Grad Center
James Parodi,
Fiscal Policy Institute
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Sara Rice,
Puerto Rican Legal Def. & Ed. Fund
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Board of JPLAC
Rabbi Jennie Rosson,
Hillal el Columbia and Bard College
Rabbi Gilbert Rosenthal,
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Pratt Center
Hon. Eric Schneiderman,
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Bruce Southworth,
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Andrew Stettner,
Jews for Racial and Economic Justice
Hon. Scott Stirling,
New York State Assembly
Dominick J. Turney, Esq.,
Brother Fishman Pastorate of
Hon. Nya Velasquez,
US House of Representatives
Jim Williams, Esq.,
National Employment Law Project



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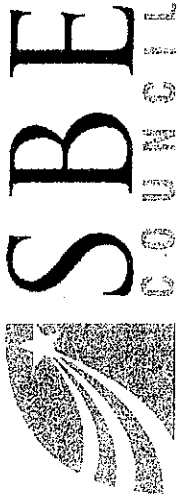
ELIOT SPITZER
Attorney General

(212) 416-3000

SUMMARY OF GREENGROCER CODE OF CONDUCT

1. Min. Wage & Overtime
 - Pay all employees at least minimum wage, now \$5.15 per hour.
 - Pay all employees "overtime" -- 1½ an employee's regular hourly rate for all hours worked past forty per week.
2. Timely Pay
 - Pay employees in a timely manner.
3. Records & Pay stubs
 - Keep all payroll & time records required by state and federal law.
 - Give each employee a weekly pay stub of hours and wages (gross & net)
4. Rest
 - Give each employee one full unpaid day of rest per week
 - Give each employee at least ½ hour uninterrupted for meal break and others as required by law
5. Rights Poster
 - Post this Code on a wall in an easy-to-see location.
 - Post a notice on a wall about basic wage and hour rights.
 - The Code and notice will be in at least English, Spanish, and Korean.
6. Days off
 - For employees who have worked at the store for at least one year: provide 2 paid sick days and one workweek of paid vacation days per year.
 - For employees who have worked at the store for at least two years: provide 3 paid sick days and one workweek of paid vacation days per year.
7. Seminars
 - Attend at least one labor law seminar by Attorney General's Office
8. Not Retaliate
 - The Code employer will not discharge or retaliate against any employee for making a complaint to the employer, the government, or the Monitor about violations of the Labor Law or this Code.
9. Organizing
 - The Code employer recognizes employees have legal right to organize and to join labor unions of their own choosing, and that the law prohibits retaliation against employees for organizing or joining a labor union.
10. Monitoring
 - The Code employer agrees to submit to unannounced monitoring of compliance with the Code at least two to three times per year.
 - When monitoring occurs, the Code employer will show all payroll and time records, and make employees available for private, confidential interviews.
11. Consumers
 - A Code of Conduct Seal will be displayed in the store window as long as the Code Employer is in good standing.
 - A list of Code members in good standing is available at the New York State Attorney General's website: www.oag.state.ny.us.
 - Code members no longer in good standing must post a notice stating as such, and will also be listed on the website.
12. Hotline
 - Call 1-800-729-1180 with complaints of violations.





REVISED & EXPANDED

SMALL BUSINESS & ENTREPRENEURSHIP COUNCIL'S

SMALL BUSINESS SURVIVAL INDEX 2006:

RANKING THE POLICY ENVIRONMENT FOR ENTREPRENEURSHIP
ACROSS THE NATION

11th Annual Edition

by Raymond J. Keating
Chief Economist

Small Business & Entrepreneurship Council

October 2006

Small Business & Entrepreneurship Council
1920 L Street • Suite 200 • Washington, D.C. 20036
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Website: www.sbecouncil.org

Small Business Survival Index 2006: State Rankings*
 (Ranked from the Friendliest to the Least Friendly Policy Environments for Entrepreneurship)

Rank	State	SBSI	Rank	State	SBSI
1	South Dakota	26.360	26	Utah	50.095
2	Nevada	29.915	27	Wisconsin	51.479
3	Wyoming	35.840	28	Maryland	51.845
4	Alabama	40.328	29	New Mexico	52.510
5	Washington	40.420	30	Montana	53.898
6	Florida	40.819	31	Nebraska	54.220
7	Mississippi	41.088	32	Connecticut	54.250
8	Colorado	42.680	33	Louisiana	54.270
9	Texas	42.710	34	Idaho	54.520
10	Michigan	42.742	35	Kansas	54.800
11	South Carolina	44.558	36	Kentucky	56.265
12	Indiana	44.870	37	West Virginia	56.660
13	Tennessee	44.974	38	Ohio	56.730
14	Virginia	45.456	39	Oregon	57.059
15	Arizona	45.748	40	North Carolina	57.482
16	Pennsylvania	45.863	41	Iowa	57.760
17	Alaska	46.770	42	Vermont	59.480
18	New Hampshire	47.256	43	Massachusetts	61.055
19	Delaware	47.310	44	Hawaii	62.608
20	Arkansas	48.158	45	New York	62.654
21	Illinois	48.494	46	Minnesota	63.590
22	Missouri	48.242	47	Maine	63.993
23	Oklahoma	49.460	48	Rhode Island	64.970
24	North Dakota	49.850	49	California	65.117
25	Georgia	49.903	50	New Jersey	65.345
			51	Dist. of Columbia	75.420

* (Please note that the District of Columbia was not included in the study ranking the states according to their liability systems, so D.C.'s last place score actually should be worse.)



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**Testimony to the New York City Council's Health Committee Re: Intro 569
Presented by: Rekha Eanni, Co-Director, ROC-NY**

Thank you for allowing me to lend my perspective in today's hearing. My name is Rekha Eanni, I am the Co-Director of the Restaurant Opportunities Center of New York, as well as a former restaurant worker. At ROC-NY, we focus on the restaurant industry alone because it's such an important industry, with NYC being the nation's restaurant capital, employing over 165,000 workers and serving millions. This is a truly profitable industry that continues to grow, and as it grows, it commands the notice of those outside of it, such as the City Council.

Our organization is continually trying to raise this industry's standards. Standards start from the top, from those who are making the rules, and employing others to carry out their vision. It is for this reason that we try to convince employers to do the right thing, to comply with the law, to maybe even go above compliance and be really remarkable employers. But with so many poor practices out there, it becomes difficult for us to ask a restaurant to take the high road. Disregard for the law is not the exception; it is the norm. And of course, this impacts the worker, it impacts the employer who is doing the right thing, and it puts a serious damper on the health of this industry.

Our belief is that the Responsible Restaurant Act is our best bet, and something that we can all benefit from. This piece of legislation allows the City to take a closer look at the worst of the trendsetters, many of whom become incredibly profitable by engaging in illegal cost-saving tactics. If we turn a blind eye towards the worst of the city's offenders, imagine the kind of precedent this sets to other restaurants that think they can do the same without consequence.

We have to make it clear that circumventing the law is neither an option nor a cost analysis that an employer can make, and that there are risks greater than financial loss at stake.

Our jobs as worker advocates becomes much more manageable when good employers set the stage in creating industry standards. When workers come to us complaining that their rights have been violated, we want to be able to tell them that there are many other restaurants out there that are doing the right thing, but until that standard is set, we are continually hitting a wall.

If a restaurant cannot even doing something as fundamental as following basic labor laws then it leaves one wondering what else is going on in that restaurant. It's no surprise that those same restaurants that are abusing its workers ALSO are cutting corners in almost every area. We've learned that when an employer respects the law in one area, they probably have the moral integrity necessary to follow the law in another area – this is why we call them “high road employers.” But we also have learned that when an employer is NOT respecting the law in one area, they usually



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don't have much respect for the law period. It is disingenuous to believe that an employer who has no standards for labor has any standards for health and safety. This employer will do anything to save a penny here and there, even if it means requiring his staff to work while sick, or not providing the necessary health and safety training. We must remember the inevitable link – when a worker is not being treated properly, the dining public's health is compromised, as is that worker's rights.

The law will not impact those restaurants already following the law – if anything, the law will benefit these employers. These employers will finally breathe a sigh of relief knowing that their compliance with the law is not in vain; they will know that their competitors will no longer be able to unfairly profit by taking the low road– at minimum, they will know that their unfair competitors won't be able to get away with non-compliance as easily as before.

The Department of Health will know that when it issues a permit, it will be more confident in knowing that its seal of approval is not going to an extreme lawbreaker. Right now, the Department of Health has the authority to deny/suspend a lawbreaker's license – now it will have a process to do so.

And finally, workers will know that the city deems their role integral enough in this economy as to warrant meaningful protection, such as that afforded by the Responsible Restaurant Act.

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**Testimony presented by Sheila Rothenberg, Former Restaurant Owner,
March 31st, 2008**

I worked in the food service industry for over 20 years. As a waitress, cook, manager and also owner of my own restaurant and catering business, I have experienced both the management and worker side of the industry. After leaving the industry, I worked with the NYC Department of Health on a restaurant worker safety program, where I interviewed owners, managers and workers in many diverse restaurants. I have also worked with youth and adults, many of whom work in the food service industry, giving workshops on safety and rights at work. You will see that I have gained many different perspectives from stakeholders in this industry, but today I speak to you as a former restaurant owner who understands the reality of running a business and who supports legislation that gives more respect to this industry.

While I believe that there are many restaurateurs doing the right thing in terms of complying with wage and hour laws, promotion policies and discrimination laws, I know that there are far too many employing workers far below minimum wage, not paying overtime and subjecting workers to verbal and sometimes physical abuse. The Department of Health monitors food safety, but they should also note the important connections between the rights of workers and the impacts on food safety, and ultimately, on the public. Enactment of the Responsible Restaurant Act is essential in order to help workers, many of whom are young and/or recent immigrants and quite frankly, desperate for work, to be treated fairly.

Because the restaurant industry in New York City is highly competitive, I'm sure many restaurant owners would claim that any more regulations would hurt them. As a former employer, I believe that the Responsible Restaurant Act is not an unfounded mandate. It is a mandate to do the right and legal thing that employers ALREADY are supposed to be doing anyway. No restaurant owner who follows the law and treats workers fairly will have an issue with this legislation. I know that if I'm doing the right thing, I won't be negatively affected by this law. If anything, it will help myself and other restaurant owners who are playing fair to be on an equal playing field. It is only those who are trying to cut corners and save money at the expense of the workers who will be troubled by it.

I urge you to enact this legislation that will assist in protecting the rights of hundreds of thousands of NYC restaurant workers who serve the public daily.

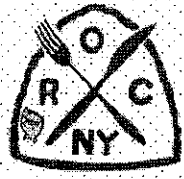
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RESTAURANT OPPORTUNITIES CENTER OF NEW YORK
275 SEVENTH AVE, 17th FLOOR
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TEL: (212) 343-1771
FAX: (212) 343-7217

**Testimony to the New York City Council
Presented by: Sekou Luke, Restaurant Worker**

My name is Sekou Luke. I moved to New York City with big dreams of becoming the next great Broadway actor, however, my only Broadway appearance to date is as a server at a NYC Italian restaurant across from Lincoln Center. This job has become my source of income and survival in NYC, determining that I have a place to live and food to eat. I work along side many other low wage workers who support whole families here and abroad, all the while making minimum wage or even less. I guess we all are seeking the great "American Dream." Yet while working in this industry my eyes have been witness to so much that runs counter to the honest pursuit of this dream. My coworkers have sometimes worked more than sixty hours of hard manual labor only to be paid for forty hours so that the owner can avoid paying overtime. I have worked strenuous sixteen hour days, on my feet without any break at all, with management totally disregarding the law requiring breaks. I have witnessed racial discrimination in hiring and promotions in the form of discarded applications and comments, such as "the owner is only looking to hire "white Italian-looking males." I have witnessed injured workers who were denied proper documentation of injury so that the company would not pay workers' compensation. I have witness worker in direct contact forced to work while sick to benefit the business why at the risk of the guest. I have also seen workers fired and retaliated against for questioning any of these illegal practices.

Today I ask, *where is the accountability?* Restaurants have become the sweat shops of the 21st century. Where is our protection? As workers, we need the Responsible Restaurant Act as a guard against illegal wage per hour practices and working conditions. I urge you, the next time you sit down for dinner in a NYC restaurant, to think of the dozens of workers behind the kitchen doors and below you in hot prep stations- they need this protection.



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**Testimony by Carolyn D. Richmond, Esq. Fox Rothschild, LLP, Counsel for New
York State Restaurant Association, New York City Chapter
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212 878.7983**

Before a Hearing of the Health Committee of the New York City Council Regarding
Intro. 569-A
March 31, 2008

Good afternoon, if it pleases the Committee and its Chair, I am Carolyn Richmond of the law firm Fox Rothschild, and I am also a Board Member and Counsel to the New York State Restaurant Association, New York City Chapter. I wish to thank the Committee for the opportunity to appear today to speak in opposition to Intro. 569-A.

This proposed law causes great consternation to the restaurant community of New York City—and indeed the entire hospitality industry. In a time of increasing economic uncertainty now—more than ever—is not the time to allow special interest groups to threaten the livelihoods of not just business owners but also many of the residents of New York City who are employed by the hospitality industry—the single largest private sector employer in this City and State.

The proposed law presents a number of legal and practical challenges. First, with all due respect, the proposal is outside of the expertise of the Health Department. In fact, 569-A would require the Health Commissioner and his staff to become experts in all of the Federal, State and City wage and hour and discrimination laws—in addition to their statutorily prescribed, and exhaustive area of expertise. In essence, the New York City Health Department would now be stepping into the shoes of at least 8 other governmental agencies and offices that have jurisdiction over these separate and distinct laws.

Second, the proposal is unconstitutional and preempted by federal law. It is inherently vague, and its purpose redundant, counter-productive and wasteful of the Health Department and Commissioner's time and resources. In fact, 569-A while more than likely preempted by the National Labor Relations Act, appears to also create what I imagine would be an untenable situation for the labor unions in the hospitality industry—in certain circumstances they too would be complicit in the loss of jobs for their members as a result of this proposal.

It seems that the City's Administrative Code should only be amended if there is a need—if somehow a gap in the law has developed or, if the City's residents are not being protected or are otherwise threatened. However, none of that is the case here. Here, the proposed law seeks to add penalties for violations to “city, state and federal minimum wage law, hours of work law, overtime compensation law and employment discrimination law.” The proposal rests both the assessment of and actual penalty in the hands of the Health Department—not an agency vested with any authority by the U.S. Congress, the New York State Legislature, or the New York Council to investigate or enforce labor and employment laws.

569-A does not cover any gap that the myriad of federal, state and local employment laws fail to cover—and those laws include: Title VII of the Civil Rights of 1964, the Age Discrimination in Employment Act of 1964, the ADA, the FMLA, the Equal Pay Act, the Fair Labor Standards Act, ERISA, the National Labor Relations Act, the New York State Human Rights Law, the New York Labor Law and the New York City Human Rights Law. Moreover, with all due respect to the New York City Health Department, the U.S. Equal Employment Opportunity Commission, the U.S. Attorney General, the U.S. Department of Labor, the National Labor Relations Board, the New York State Attorney General, the New York State Department of Labor, the New York State Division of Human Rights and the New York City Commission on Human Rights all seem to be doing a very good job of investigating and enforcing those statutes—all the while protecting the rights of New York City residents. In fact, the private class action and plaintiff attorneys bar also do a rather impressive job of protecting individual and collective rights under those laws as well.

Lets look at the numbers from just the past year. The EEOC has been increasingly activist, in April 2006 the Agency made systemic discrimination and strategic enforcement a priority—and its litigation docket shows. In 2007 they filed 336 new lawsuits and secured \$54.8 million in awards. The U.S. Department of Labor has also been busy, in 2007 they filed 114 ERISA lawsuits and also recovered over \$220 million in back pay for more than 340,000 employees.

As for those class action lawyers—they too have been busy with private claims. In 2007 the top-10 employment discrimination class actions accounted for more than a quarter of a billion dollars in settlements. And, the top ten wage and hour class actions settlements in the private sector, amounted to over \$300 million.

Here in New York State, to label Attorney General Cuomo and Labor Commissioner Smith as “activists” when it comes to enforcing the rights of workers might be an understatement. They have certainly been protecting the rights of all workers with vigor. The State Division of Human Rights and City Commission on Human Rights routinely recover penalties and awards on behalf of City residents who are victims of employment discrimination. In fact, the damages available to New York residents by statute are some of the most expansive in the nation—for example, the statute of limitations for recovery of a wage and hour claims in New York is 6 years, longer than any other state in the U.S.—and liquidated damages are 25%. And, under New York City’s Human Rights law, victims of employment discrimination can recover punitive damages. Additionally, in certain circumstances, New York law provides for criminal liability for both wage and hour and discrimination violations. All of these agencies and governmental branches are charged with and trained to carry out the mandates set forth by the respective statutes. There is simply no need for further penalties, they are not lawful and the Health Department is neither appropriate agency or equipped to handle employment matters.

569-A is not about protecting the residents of New York City—if it was, it certainly would not be limited to the food-service industry. 569-A is about a special interest group looking for greater leverage in litigation against its target. What 569-A will do is threaten many businesses to shut down and risk job loss in an industry that disproportionately employs minority and immigrant employees. This proposal also threatens more than just

the food service workers who will lose their jobs if a restaurant or food service provider shuts down—it threatens children who won't get a lunch in school, it threatens health care workers and patients who won't get meals and any one else who relies on meal services outside of the home.

This proposed law provides for business closure over trivial and technical violations of the laws—such as, the requirement to have certain posters hanging in the workplace including those for the FMLA, the Employee Polygraph Protection Act of 1988, minimum wage and over a dozen other laws. Imagine risking the closure of your business because on the day of a surprise inspection a poster was missing, or six months of time-clock punch card was missing from 6 years ago—because there was a flood in your basement office when the adjoining tenant's pipes burst? 569-A targets not just large corporations with anonymous owners, but by the Act's definition, the brunt of this Act will be born by small business owners--immigrant push-cart owners, minority owned delis, small mom and pop corner luncheonette's and pizzerias.

The special interest groups who are proponents of 569-A are using the threat of a health permit and the loss of an operating license as extortion—to extort early and excessive settlement in class action wage and hour suits. This proposal is yet another example of the extra-judicial tactics used by the special interest groups who have been attacking New York's restaurant industry. If there are legitimate disputes at issue, there are already proper governmental channels to go through. The Health Committee and the City Council ought not be used to back-door an act that is both unnecessary and unconstitutional. Thank you for your consideration.



NEW YORK NIGHTLIFE ASSOCIATION

Serving New York's Bars, Clubs & Lounges

325 Broadway, Suite 501

New York, NY 10007

TESTIMONY OF ROBERT BOOKMAN, COUNSEL, NEW YORK NIGHTLIFE ASSOCIATION, MARCH 31, 2008, INTRO 569-A, NEW YORK CITY COUNCIL

The bill singles out of all businesses, only those with Health Dept licenses for extra penalties for having a discrimination, labor law or wage violation beyond what those laws provide. So under the laws what might be a minor violation normally resulting in a small fine for the dry cleaning store next door...such as not posting all required labor law signs... can result in a restaurant or neighborhood bar losing its license...therefore its entire business...for the same violation. This will subject countless small businesses in this industry to possible blackmail by an employee..."give me this or I will go to the Health Dept."

It will also have unintended consequences for enforcement of these laws by the appropriate agencies in that it will force every business owner to either never settle a Labor law or wage case but to fight extended and expensive battles, something that is not good for either party, for fear of being found "in violation" under this bill, or, if settlements do not count as "violations" under this bill...something that is not clear...every case being settled regardless of the merit of the complaint, thereby undermining the due process rules written into these laws by Congress, the State legislature and this Council.

This bill directly violates Equal protection provisions and double jeopardy laws. This bill forces the Dept of Health to post on its web site any labor law or wage violation, going back 5 years, (a retroaction application of this bill which is also unlawful) that a restaurant or bar may have and to hold a hearing to decide its fitness to have a Health Dept license due to that violation. This forces Health Dept per diem Admin Law Judges to now weigh

Labor Law and wage laws and anti discrimination laws. What connection is there between not paying a required amount of overtime and having a clean kitchen? The vagueness of this "fitness standard" is yet another legal problem with this bill.

Finally, the bill is likely pre-empted by both Federal and State laws. These laws provide a well designed regulatory framework which includes enforcement and penalties, This bill would upset and interfere with that regulatory framework for one industry only.

These issues have in fact not been ignored by the lawful agencies responsible to enforce them: Just recently:
EXECUTIVE ORDER BY THE GOVERNOR ON SEPT 5, 2007,
CREATING A JOINT ENFORCEMENT TASK FORCE ON EMPLOYEE
WAGE ISSUES. That task force, which included the State Dept's of Labor,
Taxation and Finance, Worker's Compensation Board, Inspector General,
Attorney General, and the City Comptroller's Office.

December 19, 2007- State Dept of Labor ANNOUNCES NEW PROACTIVE
APPROACH TO ENFORCEMENT working with community groups and
unions.

February 1, 2008- THE TASK FORCE RELEASED ITS REPORT, ALONG
WITH RECOMMENDATIONS. The Task Force met with the Brennan
Center, and unions and business groups. I RECOMMEND THE STUDY TO
THIS COMMITTEE. Interestingly, it found that only 10% of businesses
were not in compliance and that the industry with the biggest problem was
the construction industry, not this one. Indeed, a study reported to the
Council in 2005 in a hearing on Immigrants in the Labor Force, found that
Manufacturing, where immigrants account for 64% of all workers,
Construction 58% and Accommodation and Food Service only 54%. and
private household employment a whopping 85%.

Good afternoon Mr. Chairman and Members of the Committee. My name is Patrick Purcell and I am Director of Special Projects for United Food and Commercial Workers Union Local 1500, New York State's largest local Union representing grocery store workers. UFCW Local 1500 represents over 22,000 workers employed by Pathmark, Stop and Shop, King Kullen, Gristedes, Key Food D'agastinos and Fairway Supermarkets. Of our 22,000 members, over 10,000 of them reside here in New York City with their families.

We are here today to testify in support of Intro 569, the Responsible Restaurant Act. We do so because the time has come for irresponsible employers to understand that being given a license to operate a restaurant in this City is a privilege, not a right. When employers take that privilege for granted and establish a pattern of violating workers rights, the privilege needs to be revoked.

In this day and age, the repeated violations of worker's rights should be reason enough to suspend or revoke an operating permit. However, restaurants that also show a pattern of violating worker rights in all likelihood are showing little regard for other laws that protect New York City consumers. Simply put: Irresponsible employers do not discriminate when it comes to not following our laws. It is not just employment laws they violate, it is in all probability, that they are showing a disregard for most laws that cover their operations and establishments.

However, today we are here to focus on ways to encourage these irresponsible employers that have accepted violating workers rights as a cost of doing business to improve their business practices. It is important to understand that when employers establish a pattern of violating workers rights, their actions have an effect on many, not just an individual worker or group of workers. For example:

- Those responsible employers, which comprise an overwhelming percentage of restaurant owners, operate at a competitive disadvantage when competitors violate laws. It is simply unfair to businesses in this city to be forced to compete with employers not following the laws of this City and State in hope of increasing their profits.

- Consumers suffer when they spend their hard earned dollars in an establishment that has shown an overall indifference to the laws of the land. Should we assume that the violating employer draws the line workers rights yet somehow follows the health and sanitation laws? Laws that govern proper food handling? In all likelihood, these employers are indifferent to all laws. However, if they disregard health and sanitation laws, people suffer.
- The economy of the City is being cheated when employers violate laws such as paying minimum wage and overtime. It is these types of practices that have become so common that they have produced the so called "underground economy" that operates on the principles of exploitation, discrimination and disregard for State and City laws.

As someone that has worked closely with this coalition, I must commend them for working so hard to write legislation that is well balance, practical, not excessively punitive to those trying to the right thing yet strong enough to eliminate those who consider violating the law as the cost of doing business. They have showed great respect and patience for the legislative process. They have addressed the concerns brought to them by effected parties.

However, this morning I realized as I looked over my notes that we are now at that point where it simply will come down to whether our elected leaders want to support good employers, the 165,000 hard working employees and the millions of consumers that enter the thousands of restaurants operating in this City everyday or do they want to continue to support that small percentage of employers that have no respect for the laws that these same elected leaders have passed.

Somewhere in the sea of laws that have recently been passed that have focused on improving the health of New York City residents, there must be room for a law that simply says that we expect owners of businesses to respect all of our laws or they should expect to be shut down. The Laws of this City are not printed an ala carte menu

New York City's Department of Health and mental Hygiene website specifically says that

The New York City Department of Health and Mental Hygiene may suspend or revoke the permit of an establishment that is found in violation of the law on three separate occasions within a 12-month period.

In that case they were referring to the Smoke Free Air Act. In retrospect perhaps the Council should consider a piece of legislation called the "Just Obey Our Laws or You Can't Do Business Here in NYC Act."

This way we will not find ourselves in the same position we do today. Having to decide whether it is important enough to protect the health of New Yorkers by banning smoking or Trans Fats in the City to the point of revoking permits for employers that do not follow those laws, but less important to insist that workers are treated fairly.



National Employment
Law Project

Testimony of Raj Nayak
Staff Attorney, National Employment Law Project
(212) 274-0579; rnayak@nelp.org

March 31, 2008

Thank you, Chairperson Rivera, and Council Members Mendez and Gioia, for inviting me to testify today. My name is Raj Nayak, and I am an attorney at the National Employment Law Project – the new home of the Brennan Center’s Economic Justice Project. Together with my Brennan Center colleague Eric Lane, we advised community groups and City Council staff in developing this proposal, the Responsible Restaurant Act (“RRA”).

Today, I will tell you more about why we need the RRA and how it would work. I will also explain how this law is rooted in New York City’s core authority to decide when to grant business licenses –the same authority that the City Council has relied upon to enact similar laws before. Finally, I will outline some other key benefits of the RRA.

I. Protecting Workers and Responsible Restaurant Owners

New York is America’s restaurant capital. The restaurant industry is a key part of our economy, providing jobs for more than 165,000 New Yorkers and serving millions of patrons each week. But too many restaurants are making a practice of cutting costs by violating basic employment laws.

A. Evidence of Pervasive Employment Law Violations

Recent research has found that employment law violations are pervasive throughout New York’s restaurant industry. In *Unregulated Work in the Global City*, a 2007 report on New York City’s low-wage economy, researchers from NELP found that intense competition in the restaurant industry has led to frequent workplace violations, especially given the lack of union presence and worker voice in the industry. Our report recounts an interview with an employer who acknowledged that overtime violations are a systemic problem: “At plenty of places there is no such thing as overtime [pay].” Worse, workers routinely reported being unpaid for work that they had already completed, or as one group described:

“On payday, we finish work at 10:30 and they started making us wait one to two hours just to tell us there’s no money. If you work 12 hours and you’re tired, and then you have to wait until 1 or 2 in the morning, and for no money, it’s terrible. Then the next week we’d just get one week’s pay. Many workers were scared and just left.”

Other surveys of restaurant workers provide some indication of the pervasiveness of these violations. The Restaurant Opportunities Center of New York (ROC-NY) published the results of one such survey in their landmark 2005 report, *Behind the Kitchen Door*. Of the 530 workers surveyed, the study found that most (59%) experienced overtime violations, and a significant

number (13%) earned less than minimum wage – then just \$5.15 per hour. The study also found a significant racial and ethnic disparities between the workers who held the industry’s lower-paying jobs – mainly workers of color, and particularly immigrants of color – and those who occupied the higher-paying positions, who were mainly white workers. A full 33% of workers also reported experiencing “verbal abuse” based on their race, immigration status, or language.

B. Effects of Violations on Workers and Responsible Restaurants

These employment law violations both harm workers and undermine responsible restaurant owners. Restaurants are looking to cut costs to compete in a competitive industry, but too many are going too far and paying their workers less than the law requires. Most of these restaurants are taking the chance that they will not get caught. And even when they do, they simply account for the fines that result as a cost of doing business.

These business practices undermine New York City’s workforce and its economy. Restaurant workers deserve to be paid at least what the law requires. And responsible restaurant owners struggle to compete against restaurants that have adopted a business practice of cutting costs by violating the law. Responsible restaurants should not be placed at a competitive disadvantage simply because they play by the rules.

C. Strengthening the Restaurant Industry with the RRA

By passing the RRA, New York City will take an important step toward protecting both workers and responsible restaurant owners. The RRA is not intended to shut down restaurants or take away important restaurant jobs. In fact, this proposal would be unlikely to require the direct review of more than a handful of restaurants annually, since very few of New York City’s restaurants have been found by a court or administrative agency to have violated these employment laws.

Instead, the RRA will still send a strong signal to the industry that compliance with basic employment laws is not optional, and will encourage more restaurants take basic employment laws more seriously. In this way, the RRA will help level the playing field for responsible restaurant owners who are placed at an unfair competitive disadvantage for playing by the rules today.

II. The RRA: An Efficient Process for Reviewing Restaurants’ Employment Law Violations

The RRA builds efficiently upon the Health Department’s existing system for regulating restaurant operating permits. Even though the law will have a significant impact on the city’s restaurant industry, it will only require the Health Department to review a handful of restaurants each year.

A. Creating a Process for Informing the Health Department’s Decision

The RRA will enhance the process for reviewing whether to grant or renew a restaurant’s operating permit, by ensuring that the city takes into account not just health code violations, but also a restaurant’s record of employment law compliance. Under the RRA, there will be three steps to that process, each of which is designed to give the Health Department additional information with

minimal burden to the agency:

First, restaurants will be asked to **disclose** their employment law violations when applying for or renewing their operating permits. Importantly, restaurants need only disclose violations when a court or administrative agency has issued a final judgment that they have violated the law. And while the RRA will send a strong signal across the city's restaurant industry that complying with employment laws is not optional, NELP's research suggests that only a handful of restaurants each year receive the sorts of final judgments or agency orders that would lead to direct review by the Health Department.

Second, the Health Department will **post on their website** a list of the disclosures that they receive. The public may then submit written comments regarding those disclosures. So, for example, where a restaurant has failed to disclose its employment law violations, the public will have the opportunity to call them to the Health Department's attention.

Third, if a restaurant has a clear record of violating the law, the Health Department will **hold a hearing** to gather more information. This hearing also gives restaurants the chance to provide context for the violations and explain any steps they have taken to improve their business practices.

In the end, the Health Department will make an informed decision on whether to grant or deny a restaurant's operating permit, or to suspend it while the restaurant takes steps to improve its business practices. But the Health Department is at no time required to conduct original research. The onus is on restaurants and the public to inform the Health Department's decision. As a result, if this process is timed properly, the Health Department's existing permitting schedule will not be delayed.

B. Building on the Health Department's Existing Practices

The Health Department is the sole agency currently charged with issuing and renewing restaurant operating permits in New York City, so it is the natural agency to enforce the RRA. Other state and federal agencies – like the federal and state labor departments and federal, state, and local human rights agencies – may collect fines and damages from employers who violate these laws. But only the Health Department controls restaurant operating permits and has the authority to ask a restaurant to cease operations.

In fact, the Health Department already considers whether applicants are complying with other laws before granting restaurant operating permits – for example, if they are current on their child support payments. It is our understanding that the Health Department has also committed to asking all applicants whether they carry workers' compensation insurance required by law – which is analogous to asking applicants about their compliance with other important employment laws.

Indeed, the city has an important interest in ensuring the integrity of the permitting process by denying permits to applicants who harm their workers or undermine responsible restaurant owners by routinely violating employment laws. But at present, there is no process for the city to consider an applicant's employment law violations when deciding whether to grant or renew a restaurant's operating permit.

III. Based on the City's Well-Established Authority to License Local Businesses

Because the current city restaurant licensing law already requires the Health Department to take into account legal violations when considering license renewals, the RRA does not actually establish any new requirements for New York City's restaurants. Instead, it creates a process to guide the health department's consideration of these violations when reviewing renewal applications. The city council and the mayor have, in fact, enacted similar laws over the years to promote legal compliance in other industries.

The RRA is rooted in the city's well-established legal authority to license local businesses. As noted, the New York City Health Code already grants the Department of Health ample authority to deny, suspend, or revoke the operating permits of restaurants that violate the law. Section 81.5(a) of the Health Code requires that all restaurants be maintained and operated in compliance with the Health Code and "all other applicable federal, state and city laws, rules and regulations." In addition, New York courts have long held that cities in New York State have the implicit authority to deny business permits to applicants who lack good character, for example, as evidenced by its record of violating the law. The RRA simply creates a formal process by which the city can exercise its authority.

The city has already enacted similar laws regulating the licensing in other industries. For example, New York City's waste carting law establishes a process to review a wide array of each applicant's legal violations. The law provides that "after notice and the opportunity to be heard," a license can be denied for any applicant who lacks "good character, honesty and integrity." It allows the city to consider nearly any of an applicant's business-related violations in making that determination, including even pending indictments or civil actions. A federal appeals court has upheld the waste carting law in the face of a constitutional challenge, and state courts routinely affirm the trade waste commission's licensing decisions as well. Similar laws establish formal processes for regulating licenses for fish market operators and pushcart vendors, too.

IV. Other Key Benefits of the RRA

The RRA is designed to create minimal burdens for the Health Department.

- The RRA does not require the Health Department to seek out information about each applicant's record of violating the law. **Restaurants themselves will be required to disclose this information** to the Health Department, and members of the public may submit additions or corrections if they believe that the information disclosed is incomplete or inaccurate.
- The Health Department **already collects similar information** to determine whether applicants are current on their child support payments, and the agency has committed to collecting information on whether they carry workers compensation insurance. The RRA would simply require the agency to add a similar question to its application to ask if any court or administrative agency has found that the applicant violated these basic employment laws.
- Restaurants will only be required to disclose legal violations where a **court or administrative**

agency has issued a final judgment that they have violated the law. While the RRA will send a strong signal across New York's restaurant industry that complying with the law is not optional, **only a handful of restaurants** each year receive the sorts of final judgments or agency orders that would actually lead to review under this law.

- Studies by researchers from the NELP and ROC-NY have found **pervasive violations** of these laws across New York City's restaurant industry – but **very few restaurants** actually face legal action under these laws.
- In fact, NELP has searched the LEXIS database for all New York state and federal court cases involving New York City restaurants with minimum wage or employment discrimination violations in 2007. NELP found **only one reported judgment** against a restaurant for these violations during that time period.
- While no such search can be exhaustive, it is indicative of how **few restaurants have the type of judgments** that may lead to review under the RRA.
- Nonetheless, the RRA will still **send the signal throughout the restaurant industry** that the City seriously considers violations of these laws – and that it will protect the responsible restaurant owners who already follow the law.
- The Health Department is **only required to hold a hearing only if the applicant has a demonstrated record of violating these laws** – that is, where a court or administrative agency has found that they have violated the law.

Many responsible restaurant owners support the RRA.

- Responsible restaurant owners – and in fact the vast majority of restaurant owners in New York City – **will not be harmed** by this law because no court or administrative agency has found that they have violated the law.
- In fact, many responsible restaurant owners support this law because it **levels the playing field**, encouraging the City to take action against restaurants that depend on violating the law as a business practice.

The RRA includes protections for restaurants reviewed under this law.

- Neither the bill's proponents nor restaurant workers want to close restaurants and take away restaurant jobs.
- In fact, applicants who disclose a record of such violations have the **opportunity for a hearing** at which they can submit testimony, provide additional context, and explain any steps that they have subsequently taken to improve their compliance with the law.
- This law **never requires the Health Department to take any specific action to revoke or deny an applicant's permit**; on the contrary, it **recognizes the agency's discretion** in deciding

whether to grant or renew an applicant's operating permit and to decide which restaurant owners are the most egregious violators.

- In effect, the burden is on any challenger to explain why a restaurant *should not* receive a permit.

The RRA is supported by a diverse coalition of community groups, policy advocates, and labor allies.

- The New York City Restaurant Industry Coalition is calling for enactment of this new law. Its members include the Restaurant Opportunities Center of New York, the National Employment Law Project, the New York Immigration Coalition, Make the Road New York, United Food and Commercial Workers (UFCW) Local 1500, the New York Committee for Occupational Safety and Health (NYCOSH), and the Community Development Project of the Urban Justice Center.
- The National Employment Law Project advised the City Council in designing the legislation and provided legal and policy support for the campaign.

Conclusion

Thank you again for your time and for the opportunity to speak today. I would be happy to answer any questions you have about this proposal, either today or in the future.

Additional Resources

ANNETTE BERNHARDT, ET AL., UNREGULATED WORK IN THE GLOBAL CITY: EMPLOYMENT AND LABOR LAW VIOLATIONS IN NEW YORK CITY (2007), *available at* <http://www.brennancenter.org/globalcity/>

RESTAURANT OPPORTUNITIES CENTER OF NEW YORK, BEHIND THE KITCHEN DOOR: PERVASIVE INEQUALITY IN NEW YORK'S THRIVING RESTAURANT INDUSTRY (2005), *available at* <http://www.urbanjustice.org/pdf/publications/BKDFinalReport.pdf>.

Other New York City Responsible Licensing Laws:

- N.Y. City Code § 16-509 (waste cart license)
- N.Y. City Code § 17-317 (pushcart vendor permit)
- N.Y. City Code § 22-216 (fish market licenses)

Please contact Raj Nayak at the National Employment Law Project with any further questions about this proposal: (312) 399-9904 (cell) or rnayak@nelp.org.

Exhibit A: About the Responsible Restaurant Act

Promoting Good Jobs in New York's Restaurant Industry:

The Responsible Restaurant Act

Lead Sponsors: Council Members Eric Gioia and Rosie Mendez

New York City is America's restaurant capital. Whether it's in Union Square or Jackson Heights, our multitude of great restaurants makes New York one of the world's foremost food destinations. And the restaurant industry is a key part of our economy, providing jobs for more than 165,000 New Yorkers and serving millions of patrons each week. That's why it's so important to ensure that our restaurants act responsibly and follow the law.

The Problem: Too many restaurants are cutting costs by violating basic employment laws.

- ⇒ Research shows that many restaurants pay less than the minimum wage and don't pay overtime—and some discriminate in hiring and promotions.
- ⇒ This undermines New York City's workforce and its economy, and is unfair to the majority of responsible restaurants that are playing by the rules.

The Solution: New York City can reverse this trend through the **Responsible Restaurant Act**.

The Responsible Restaurant Act builds upon the City's existing legal authority to deny or temporarily suspend a restaurant's permit for good cause, including its established record of violating the law. Specifically:

- (1) It creates a process to help the City decide whether to grant or renew a restaurant's operating permit, including consideration of its record of employment law violations; and
- (2) It provides the City more information about a restaurant's history of employment law violations:
 - Restaurants will disclose their employment law violations when applying for or renewing an operating permit;
 - The public may submit written comments regarding a restaurant's record of complying with employment laws; and
 - The City may also hold a public hearing to gather more information – especially for restaurants with a clear record of violating these basic employment laws.

By enacting the Responsible Restaurant Act, New York can make clear that compliance with basic employment laws is not optional and help to promote a strong restaurant industry.

For more information on the Responsible Restaurant Act, please contact Raj Nayak at the National Employment Law Project: 212-274-0579 or rnayak@nelp.org.

Exhibit B: Application for Restaurant Operating Permit

The Health Department already asks restaurant applicants about their compliance with other laws – for example, whether they are current on their child support payments.

See page 3 of the Restaurant Operating Permit application.

YOU ARE NOT REGISTERED TO VOTE WHERE YOU LIVE NOW, WOULD YOU LIKE TO APPLY TO REGISTER TO VOTE HERE TODAY?

YES NO

Applying, or declining to apply, to register to vote will not effect the amount of assistance that you will be provided by this agency. you would like help in filling out the voter registration application, we will help you.

APPLICATION FOR PERMIT

FALSIFICATION OF ANY STATEMENT MADE HEREIN IS AN OFFENSE PUNISHABLE BY A FINE OR IMPRISONMENT OR BOTH. (N.Y.C. ADMINISTRATIVE CODE 1151-9.0)

FOR OFFICE USE

FOR OFFICE USE

AMIS NUMBER		PERMIT NUMBER	
DOCUMENT NUMBER		TYPE	NUMBER
REASON FOR APPLICATION		DOLLARS	CENTS
CODE	APPROVAL STATUS	FEE AMOUNT	FEE CLASS
N - NEW PERMIT	<input type="checkbox"/> 1. APPROVED		
A - AMEND	<input type="checkbox"/> 2. PENDING	BORO	ESTAB. TYPE
T - TERMINATE	<input type="checkbox"/> 3. DISAPPROVED		DIVISION
W - REACTIVATE			DISTRICT
L - REISSUE SAME NO.			APPLICATION DATE
			MO DAY
			DATE PERMIT ISSUED
			MO DAY

NAME OF PERMIT

THE UNDERSIGNED MAKES THE FOLLOWING STATEMENTS IN ACCORDANCE WITH PROVISIONS OF THE HEALTH CODE:

IMPORTANT: Please type or print legibly using capital letters. Allow spaces between completed words or numbers. Standard abbreviations are permitted. Sections must be completed. Section G is to be completed by all temporary food applicants.

SECTION A - DATE EXPECTED TO OPEN	SECTION B - CHECK DAYS CLOSED / ENTER TIMES	SECTION C - NUMBER OF SEATS
MO / DAY / YEAR	<input type="checkbox"/> SUN <input type="checkbox"/> MON <input type="checkbox"/> TUES <input type="checkbox"/> WED <input type="checkbox"/> THURS <input type="checkbox"/> FRI <input type="checkbox"/> SAT	
	OPENING TIME	CLOSING TIME

SECTION D - NAME, ADDRESS AND TELEPHONE NUMBER OF ENTITY TO WHICH PERMIT IS TO BE ISSUED

READ CAREFULLY: Enter the Corporate name and location of business establishment. If not incorporated, enter your name(s) and location of business establishment.

NAME OF CORPORATION, PARTNERSHIP, PARTNERS OR INDIVIDUAL OWNER (Last Name First)

TRADE NAME/DBA	TELEPHONE NUMBER
	(AREA CODE)
BUILDING NUMBER	STREET
	PREMISES LOCATION (FLOORS, STORE #, BOOTH #)
CITY OR TOWN	STATE
	ZIP CODE

SECTION E - MAILING ADDRESS IF DIFFERENT FROM PERMITTED ESTABLISHMENT'S ADDRESS (INCLUDE APARTMENT #, P.O. BOX #)

STREET ADDRESS
CITY OR TOWN
STATE
ZIP CODE

SECTION F - E.I.N. NUMBER	SECTION G - EVENT DATE (Temporary Food Applicants Only)	RAIN DATE
	FROM TO	FROM TO

CITYWIDE LICENSING CENTER - DEPARTMENT OF HEALTH AND MENTAL HYGIENE - 42 BROADWAY, 5TH FLOOR, NEW YORK, N.Y. 10004

THE REMAINING SECTION APPLY TO ALL APPLICANTS APPLYING FOR A PERMIT.

SECTION H - LIST NAMES (LAST FIRST), HOME ADDRESSES, AND SOCIAL SECURITY NUMBERS OF OWNER - PARTNER - CORPORATE OFFICERS						
1	NAME	SOCIAL SECURITY #			TITLE	
	HOME ADDRESS	ZIP CODE				
2	NAME	SOCIAL SECURITY #			TITLE	
	HOME ADDRESS	ZIP CODE				
3	NAME	SOCIAL SECURITY #			TITLE	
	HOME ADDRESS	ZIP CODE				
4	NAME	SOCIAL SECURITY #			TITLE	
	HOME ADDRESS	ZIP CODE				
5	NAME	SOCIAL SECURITY #			TITLE	
	HOME ADDRESS	ZIP CODE				
6	NAME	SOCIAL SECURITY #			TITLE	
	HOME ADDRESS	ZIP CODE				

SIGN HERE ▶	SIGNATURE OF APPLICANT OR CORPORATE OFFICER	TITLE	ARE YOU 21 YEARS OF AGE OR OVER? <input type="checkbox"/> YES <input type="checkbox"/>
		TELEPHONE NUMBER	

IMPORTANT

"If you are applying for a Food Service Establishment or Non-Retail Food Processing Establishment permit you must telephone the Department's Bureau of Food Safety and Community Sanitation at (212) 676-1600, Monday through Thursday, 11:00 AM to 3:00 PM, at least 21 days before you are ready to begin operating (Section A above), to schedule a pre-operational inspection. DO NOT SCHEDULE THIS INSPECTION UNLESS ALL CONSTRUCTION/RENOVATION HAS BEEN COMPLETED, ALL EQUIPMENT HAS BEEN INSTALLED, AND YOU ARE READY TO OPEN FOR BUSINESS."

FOR OFFICE USE ONLY

PRIOR APPROVAL(S) - AUTHORIZATION TO ISSUE PERMIT						
ACTION TAKEN BY DIVISION OF PERMITS			ACTION TAKEN BY APPROVAL UNITS			
CHECK (✓) APPROVAL UNIT APPLICATION IS SENT TO	DATES		DISPOSITION		AUTHORIZED SIGNATURE	TITLE
	SENT	RETURNED	APPROVAL-A DISAPPROVAL			
			A/D	DATE		ASST. COMM.
<input type="checkbox"/> RADIOLOGICAL HEALTH						
<input type="checkbox"/> PUBLIC HEALTH ENGINEERING						
<input type="checkbox"/> FOOD SAFETY AND COMMUNITY SANITATION						
<input type="checkbox"/> VETERINARY PUBLIC HEALTH						

CITYWIDE LICENSING CENTER - DEPARTMENT OF HEALTH AND MENTAL HYGIENE - 42 BROADWAY, 5TH FLOOR, NEW YORK, N.Y. 10004

OCSE DOCUMENT NUMBER

Grid for OCSE Document Number

CHILD SUPPORT CERTIFICATION

NYC OFFICE OF CHILD SUPPORT ENFORCEMENT



A B C D E F G H I J K L M N O P Q R S T U V W X Y Z

PLEASE PRINT IN BLOCK LETTERS WITHOUT TOUCHING THE SIDES OF THE BOXES (SEE EXAMPLES ABOVE AND RIGHT)

0 1 2 3 4 5 6 7 8 9

THIS FORM MUST BE FULLY COMPLETED BY APPLICANT FOR APPLICATION TO BE VALID

Last Name																										
First Name																										
Social Security	/		-			Date of Birth		M	M	/	D	D	/	Y	Y											
Home Address																										
City														State		Zip										

CERTIFICATION PURSUANT TO GENERAL OBLIGATIONS LAW SECTION 3-503(2)

I, _____, being duly sworn, make the following statement:

(Choose 1 or 2, and put an "X" in the box in front of whichever is appropriate)

- 1. I am not under a court or administrative order to pay child support. OR
 - 2. I am under an obligation to pay child support. My child support account number is (if applicable) _____
- (If you chose #2, Put an "X" in front of the applicable statement)
- A. I do not owe arrears equal to 4 months or more of child support payments.
 - B. I have arrears equal to 4 months or more of child support payments, and one of the following statements applies to me (check the appropriate boxes):
 - I am making payments by income execution or by court agreed payment/repayment plan or by a plan agreed to by the parties.
 - My child support obligation is the subject of a pending court proceeding.
 - I am currently in receipt of Public Assistance or Supplemental Security Income. My case number is _____
 - C. I have arrears equal to 4 months or more of child support payments and none of the above statements in "B" apply to me.

I hereby do solemnly swear that the information provided by me in this certificate is true and accurate to the best of my knowledge. I acknowledge that this statement is under oath.

Sworn before me on this _____ day _____ X _____
of _____, 2000 _____ Signature

Notary Public, State of New York

Date

THE INTENTIONAL SUBMISSION OF FALSE WRITTEN STATEMENTS FOR THE PURPOSE OF FRUSTRATING OR DEFEATING PAYMENT OF SUPPORT IS PUNISHABLE PURSUANT TO SECTION 175.35 OF THE PENAL LAW. PERSONS WHO ARE FOUR MONTHS OR MORE IN ARREARS IN CHILD SUPPORT MAY BE SUBJECT TO SUSPENSION OF THEIR BUSINESS, PROFESSIONAL AND/OR DRIVERS LICENSE

DO NOT WRITE BELOW THIS LINE - FOR OFFICIAL USE ONLY

- Information verified, or status of case unknown to OCSE
- Information is at variance with OCSE records.

Verifying Section & Supervisor: _____ Date: ____/____/____

30627



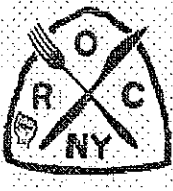
Exhibit C: Other Laws

The New York City Health Code already requires that restaurants be operated in compliance with federal, state, and city laws, rules, and regulations – including employment laws:

§ 81.05 Technical review and pre-permitting inspections for food service establishments and non-retail food processing establishments.

(a) An operator of a food service establishment or non-retail food processing establishment shall construct, equip, furnish, maintain and **operate such establishment in compliance with this Article and all other applicable federal, state and city laws, rules and regulations.**

* * *



RESTAURANT OPPORTUNITIES CENTER OF NEW YORK
275 SEVENTH AVE, 17th FLOOR
NEW YORK, N.Y. 10001
TEL: (212) 343-1771
FAX: (212) 343-7217

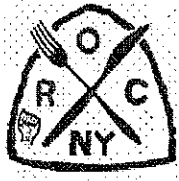
Testimony to the New York City Council's Health Committee Re: Intro 569
Presented by: LaNysha Adams, Policy Organizer, ROC-NY

My name is LaNysha Adams and I am the Policy Organizer at the Restaurant Opportunities Center of New York. Like all of our members, I too was a restaurant worker. At ROC-NY, most of the work we do centers around an unjust fact: workers in the industry are not being paid minimum wage and are being forced to work while sick.

Behind the Kitchen, published in 2005, was the first comprehensive research on the industry in over 20 years, and the exact numbers of violations in this booming industry were disturbing: of the 500 workers surveyed over 70 percent experienced minimum wage violations, 84 percent did not receive sick days, 71 percent did not receive promotions and 52 percent reported working while sick.

We need The Responsible Responsible Act to protect any and everyone involved in a dining out experience, which includes the workers, the consumers, the employers and the Department of Health – the sole agency with the power to decide who receives an operating license. If employers with “low road” business practices, such as putting pressure on workers, cutting costs on training and not paying minimum wage, are given the privilege of a license to operate then what are the implications? It is unfair to those employers who *do* follow the law to have to compete with those employers who get to profit from *not* following the law.

Intro 569 promotes good workplace practices in the restaurant industry while holding employers who break the law on a number of levels accountable. “Low road” business practices create bad working conditions and bad dining conditions for the public. We encourage the City Council to pass the Responsible Restaurant Act to make “high road” practices a standard in the industry.



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**Testimony presented by Rosanne Martino
General Manager, One If By Land, Two If By Sea
March 31st, 2008**

I am very honored to have the opportunity to testify today. I am the general manager of the restaurant One if by Land, Two if by Sea. We employ 67 full and part-time employees. I began working in restaurants at the age of 16 while still in school.

Managing a restaurant has proven, by far, to be the most challenging out of all the industries I worked in. There are thousands of restaurants a diner can choose from in New York. With that much competition, price often becomes a deciding factor for a patron. There are many fixed costs involved in operating a restaurant: rent, liability insurance, energy costs, etc. In my experience, many restaurants, including many high profile restaurants, cut costs by breaking labor laws.

Cooks are often paid either shift pay or off-the books, manager's costs are defrayed by cutting them in on the waiters' tip pool, only managers are offered health insurance, workers are not compensated for sick days. This results in a lower payroll, therefore, lower workers compensation premiums, lower unemployment tax and lower payroll taxes. Workers are paid partially in cash, and who are not offered health insurance through their companies, appear eligible for government subsidized insurance programs. Sales are being underreported in order to pay these workers in cash, which benefits the restaurant in lower liability insurance premiums and a lower sales tax liability. In some restaurants, if plates or glasses are broken, the cost is deducted from the employee's pay. **In effect, these restaurants are receiving government and employee subsidies to conduct business.**

Do we expect a restaurant that gets away with cutting corners with labor laws to not cut corners with Health Department regulations? Generally, in restaurants, money is spent where the customer can see it: in the dining room. Conditions behind the kitchen door may surprise many diners. If a line cook is being paid shift pay or cash and is not entitled to sick pay, he or she will come to work sick and handle your food. He can't afford not to. Restaurants may turn a blind eye when perishables are used beyond their expiration dates. It is a restaurant's responsibility to educate their workers regarding labor laws and health department regulations. The NYC Department of Health offers food safety protection courses to restaurant workers for a nominal fee. Many restaurants only have one person who holds the certificate of completion for that course. **An employer who does not abide by simple minimum wage and overtime laws will unlikely pay or grant time off for a worker to take and complete the Food Handling course. When workers are ignorant of laws or work in an atmosphere of fear, they are unlikely to speak up when refrigeration units are not maintaining proper temperatures, or when they are not provided thermometers for testing temperatures of meats and fish, and can not be expected to understand the proper cooling down methods so bacteria doesn't form in stocks and sauces. They will be afraid to throw away that cutting board that has become a breeding ground for bacteria. Bussers may be encouraged to use the leftover butter, milk or bread from one table on the next table. Sanitizing solutions and disposable gloves may only be on "display" for when the Health Department shows up. **This puts the dining public at large at risk. Everyone becomes an unwilling accomplice in the owner's illegal practices.****

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Restaurant owners know there is always the possibility of a worker going to the Labor Department and that an investigation may begin and it may cost them money down the road. That is a risk far too many restaurant owners are willing to gamble against because ultimately, other than a monetary cost, there are no further ramifications. At whatever point it is discovered that they have been in violation of labor laws, they know they will have gotten away with it longer than the State can investigate, and in the long run, they will still have saved money. If it were understood that labor law violations could potentially risk their license to operate a restaurant, and that the city is serious about routing out these violators, the incentive would be much greater to comply.

As a restaurant manager, who works for an owner who does comply with the law, I would like to see the playing field leveled. We are in serious economic times where dining out has become a luxury many can afford to eliminate in their budgets. If it costs a restaurant more to do business legally, money is getting tighter and the owner sees everyone around him doing it wrong with no consequences, how can he not be tempted to "follow the pack"?

I urge you to seriously consider the Responsible Restaurant Act which will protect restaurant workers and the dining public in this city. The City Council has an opportunity here to make a loud statement to restaurant owners across this city, that their dirty little secret is out and that there will be a higher cost to be paid if they don't comply with the laws that already exist to protect the public.

Thank you for your time,

Rosanne Martino
General Manager
One if by Land, Two if by Sea

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THE CITY OF NEW YORK

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Michael R. Bloomberg
Mayor

Thomas R. Frieden, M.D., M.P.H.
Commissioner

nyc.gov/health

Testimony
of
Jessica Leighton, PhD
Deputy Commissioner
New York City Department of Health and Mental Hygiene

before the
New York City Council Committee on Health
Regarding

Intro. 569

March 31, 2008

City Hall
Council Chambers
New York, NY

Good afternoon Chairperson Rivera and members of the Health Committee. My name is Jessica Leighton and I am Deputy Commissioner for Environmental Health at the New York City Department of Health and Mental Hygiene (DOHMH). Joining me today are Elliott Marcus, Associate Commissioner for Food Safety and Community Sanitation, and Robert Edman, Assistant Commissioner for Food Safety and Community Sanitation. Thank you for the opportunity to testify regarding Intro. 569, a bill that would require DOHMH to consider an applicant's character and fitness prior to issuing or renewing a food service establishment (FSE) permit in New York City.

The intent of this bill is to provide a new enforcement mechanism to ensure that restaurant owners comply with labor and employment laws. Violations of the labor law seriously affect the lives of many New Yorkers, including poor immigrant workers, and we share the Council's concern in this regard. Today we will give you an overview of the Health Department's role in regulating and providing support to food service establishments and then discuss Intro 569.

With more than 23,000 permitted restaurants, New York City is often considered the dining capital of the world. Throughout the five boroughs there is a wide variety of cuisines and styles—from corner bistros to pizza shops; five star restaurants to kosher delis. As part of the Department's mission to protect and promote public health, DOHMH is responsible for ensuring that all FSEs, including restaurants, are properly permitted and operating safely. Our primary concern is the prevention of food-borne illnesses, and we maintain high regulatory standards so that every New Yorker can have a dining experience that is safe and enjoyable

Overseeing FSEs requires a combination of enforcement and education. The Health Department's Bureau of Food Safety and Community Sanitation is responsible for establishing policy and enforcing the City's Administrative and Health Codes, as well as certain provisions of the New York State Sanitary Code. The Bureau relies on a staff of highly trained Public Health Sanitarians to conduct unannounced inspections and educate business owners on proper food safety practices. The Bureau inspected 99.7% of all permitted FSEs at least once in fiscal year 2007.

New FSEs must pass an initial pre-permit inspection prior to being allowed to open for business. Cyclical inspections are random and unannounced. Repeat offenders may be referred to the Accelerated Inspection Program for more carefully controlled monitoring and may ultimately have their permit revoked. All restaurant inspection results are posted on the Department's website, providing the transparency necessary to help consumers make informed decisions about where to dine.

The scoring system used during these inspections focuses on "risk factors" for food-borne illness that have been identified in studies conducted by the Centers for Disease Control and Prevention. These risk factors have been determined to be the leading causes of food-borne illnesses or disease. A food service manager's knowledge of food safety principles is key to reducing illnesses and diseases caused by food. These risk factors are:

- Improper personal hygiene practices
- Improper handwashing and bare hand contact with ready to eat foods

- Improper cooking and holding temperatures
- Cross contamination of food and food equipment
- Food from unapproved sources.

Other conditions indicative of poor sanitation, such as rodent infestation, also are assessed during restaurant inspections.

All food service establishments are required to have a person on site at all times who holds a Food Protection Certificate. The Department's Health Academy offers the Food Protection Certificate course online for free and in-person for a fee. This comprehensive course covers a wide variety of topics ranging from basic food safety and proper food storage to worker health and safety.

DOHMH is also concerned about worker health and safety, and has developed materials and training for FSE operators on maintaining a safe work environment. According to the National Bureau of Labor Statistics, the rate of injuries among food service employees is slightly lower than the average for all private industry workers. However, because of the large numbers of people employed in this work sector, the total number of reported injuries among food service workers is relatively large, third only to the number among hospital and construction workers. In an effort to minimize workplace accidents, the Department developed brochures providing simple tips to reduce burns, cuts, and falls in the workplace, and publishes a quarterly newsletter ("Food Matters") that is distributed to all FSEs in New York City. These are useful tools for reinforcing critical health and safety messages to FSE operators. These materials are also distributed by Public Health Sanitarians during their routine inspections.

Intro 569 requires DOHMH to identify restaurant owners that have had complaints or findings of illegal labor practices and consider such information in determining whether they should receive a restaurant permit. While we support the need to identify and address labor law violations, we oppose this legislation and have the following concerns about the implementation of such a law by the Health Department.

First, Intro 569 would redirect the Department's resources away from our mandated obligation to protect public health and toward the enforcement of employment and labor laws. The legislation requires DOHMH to consider whether an FSE is operated and maintained in compliance with city, state and federal minimum wage law, hours of work law, overtime compensation law, and employee discrimination law. The Department's expertise is in health and safety, not in wage and other labor issues. The amount of Department resources that would need to be devoted to carrying out the tasks contemplated by this bill would impact negatively on our ability to provide oversight to ensure safe food in restaurants.

Second, we do not have adequate evidence that there is an association between labor law violations and Health Code violations related to food safety. Although a recent endeavor by the Urban Justice Center asserts that restaurant workers who report labor law violations are more likely to engage in activities that jeopardize food and worker safety, and that those restaurants with labor law violations were "likely to have been charged with critical health code violations", the methodology used to make this assessment is flawed for a number of reasons. It is based on

a biased set of self-selected respondents who are not likely to be representative of the industry overall and may represent facilities with a greater frequency of violations. In this regard, there is no way of knowing whether the restaurants represented in the studies are an accurate reflection of the industry as a whole. Most important is that to make the determination of the association between labor and Health Code violations, the interviewers looked at the subset of workers who provided the name of the restaurant at which they worked and attempted to compare this information with the information on the Department's website regarding Health Code violations. This type of assessment is extremely flawed because there is no comparison group. The study asserts that when they checked our website, they found that employers reported by study participants to have violated employment laws were also likely to have been charged with at least one of six Health Code violations. In fact, when we looked at data for all NYC restaurants, two thirds of restaurants in NYC have been found to have violated one of these Health Code violations. Additionally, nearly 90% of restaurants in NYC have had at least one violation on their initial inspection.

Third, the enormous administrative requirements of the proposed bill will likely not be offset by improvements in labor practices or public health. Each year more than 26,000 FSEs apply for permit renewals, and approximately 4,500 more apply for new permits. Intro 569 would require all applicants to certify on their application any finding by a court of law or administrative agency that any principal of the FSE has violated any city, state or federal employment or labor law during the preceding five years, as well as any additional information the Commissioner may require in order to make a determination of good character and fitness. The Department would then have to review all of these reports and post them on the DOHMH website. The legislation also establishes public hearing requirements that will place a heavy resource burden on the Department and slow down the issuance of permits.

Fourth, the proposed legislation could result in serious abuses. Intro 569 provides the public with an opportunity to submit written comments to the Commissioner including any information concerning the character and fitness of the applicant(s). The legislation places no restrictions on the type of information the public may submit, creating the potential for abuse and placing the Department in a position to investigate and substantiate these allegations. Any member of the public may request a public hearing to evaluate the character and fitness of a potential operator based on this circumstantial evidence. Further, the Commissioner would be required to hold a hearing if he receives a "disclosure or credible evidence" of any violation of employment or labor laws. Given the Department does not have the resources to independently verify the accuracy of this information, the legislation runs the risk of placing the power to pursue actions against a potential FSE operator in the hands of an individual or group who may put their own self-interest above all else.

Lastly, the legislation may have unintended consequences for the same food service workers the bill intends to protect. Restaurants serve as an important source of employment in NYC. While we do not support bad actors and agree that appropriate action needs to be taken by agencies that have the expertise to address unfair labor practices, this law may result in the temporary closure of large numbers of restaurants while the review process outlined in the legislation plays out. This could leave many food service workers without work.

In closing, violation of labor laws is serious and should be addressed by appropriate agencies with expertise and jurisdiction in labor issues. The research supporting Intro 569 as a strategy to address these violations falls dramatically short of objective evidence supporting the link between prevalence of labor law violations and public health risk. Moreover, the notion that greater adherence to labor and employment laws will lead to improved public health practice in food service establishments is also uncertain. We know that unsafe food comes from unsafe food handling practices, and this is where the Health Department should focus its attention. If Intro 569 is passed, DOHMH will be forced to redirect critical resources away from the protection of food safety and the education of FSE operators, and toward the enforcement of laws that are already regulated by a host of other government agencies. Because of these serious concerns, the Department must oppose this bill.

Thank you for the opportunity to testify. I'm happy to answer your questions.

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Testimony by E. Charles Hunt, Executive Vice President, New York State Restaurant Association
before a Hearing Regarding Intro. 569-A
by the Health Committee of the New York City Council
March, 31, 2008

Good afternoon, my name is Charles Hunt and I am the Executive Vice President of the Greater New York City Chapters of the New York State Restaurant Association. I wish to thank the committee and its chair for this opportunity to speak out in opposition to Intro. 569-A.

The New York State Restaurant Association is a not-for-profit trade association which represents over 2,500 restaurants, bars, clubs and other foodservice operations within the five boroughs of New York City and over 7,000 throughout New York State. We represent an industry segment which as a whole employs approximately 300,000 NYC workers, and does \$15 billion a year in business in New York City.

In the last decade full-service restaurants have posted the biggest net gain in job creation in NYC over the period 1996-2006—an increase of 44%, 30,000 new jobs, far ahead of any other sector.

Our members, and the industry as a whole, view Intro 569-A as a direct attack on our livelihood and that of our employees. I would like to ask each and every council member to consider the number of restaurants in their district and the financial impact on their constituents that the possible job loss and closures that could be caused by the enactment of this proposed law.

The United State Congress and New York State have already provided appropriate penalties for violators of employment laws in all industries. A law that singles out foodservice businesses for extra penalties by linking previously adjudicated violations to the issuance or renewal of health permits is inordinately inappropriate and unnecessary. I am not an attorney, but the imposition of different penalties for different businesses sounds like an equal protection issue to me. In addition, a principal of a new or different establishment could be put out of business based on something that occurred at a totally unrelated business. Example: A manager who previously worked for an establishment that was found to be in violation of a labor law up to five years prior could be deemed to “not of good character and fitness” causing his current employer to be denied a permit such as health permit that is required to conduct business. This would not happen to a manager of the shoe store, dry cleaner or construction project next door. (Or even a supermarket or deli that is licensed by the NYS Department of Agriculture and Markets rather than the NYC Department of Health and Mental Hygiene.)

I am amazed that the media and other organizations use isolated negative incidents to suggest “pervasive violations” (Where I went to school, pervasive meant everyone.) rather than praising NYC’s 26,000 restaurants and foodservice facilities that serve over six billion meals a year for their world renowned quality and diversity. A closer and fairer look would reveal the common cause restaurant operators have in supporting lawful and purposeful health, safety and labor standards and the scrupulous protection of employee rights and needs.

In the course of a year, our association receives hundreds of calls from our members and others seeking information and guidance regarding laws and regulations that apply to our

industry. These queries are almost entirely from operators who are pro-actively attempting to comply. We come here affirming our commitment to continue to assist our industry to maintain proper workplace conditions and labor practices for our most important asset—our employees.

Commencing in 2004, on the state level, NYSRA has retained a professional group, Labor & Monitoring Consultants, whose sole purpose is to inform our statewide membership on labor standards and compliance issues, as well as to design and conduct trainings and seminars on recurring or new labor law issues. Here in New York City we frequently offer seminars specifically about labor law and workplace practice compliance. The response to these services reflects that restaurant owners and managers are interested in proactive compliance. They realize that they need to treat workers well and fairly in order to retain them and by doing so to avoid the added costs and lost time brought about by violations. Self-monitored compliance, doing it right the first time, is an efficient and cost-saving approach.

All responsible restaurant and foodservice operators embrace compliance, particularly for the industry's entry level employees. Certainly some of these employees start at the minimum wage. However, employee turnover has a much higher cost than paying a higher wage to employees once they are identified as competent and dedicated workers, proven through their initial performance and response to training. Therefore, it is obviously in the best interest of owners and managers to increase wages in order to retain valuable employees.

I am hoping that my remarks today will help the Council and its committees understand the foodservice industry's and our association's continuing recognition of our responsibilities in maintaining proper and compliant working conditions for restaurant employees.

Over the last several years, there has been considerable attention paid to labor law compliance. There has been stepped up enforcement of existing laws and regulations by the New York State Department of Labor. As a result, we feel that the restaurant, foodservice and hospitality industry is at a much greater level than it has ever been.

We are convinced that our educational outreaches have made and will continue to make a significant impact. Existing laws are more than adequate to bring recidivists into compliance, punish them and, if appropriate, put them out of business. Therefore, we are adamant that additional legislative intervention is not needed. We are already one of the most heavily regulated industries in the city.

We invite those concerned with employee rights and health and safety issues in the workplace to review what NYSRA has already done and continues to do for our industry to foster increased compliance by employers with all existing fair labor standard laws. We welcome any ideas about correcting areas of concern to all workers regardless of race or status, whether they are the high school grad, the new immigrant, the new citizen, or the old hands in our workforce. The best way to make New York City's restaurant industry a model of across-the-board compliance is through education rather than an unfair and ill-conceived law such as Intro 569-A.

Thank you for this opportunity to testify on this matter.

Testimony submitted by Nicole Ponseca, Maitre d' (Employer), Dennis Foy Restaurant.

Thank you for allowing me the opportunity to testify on a critical issue in the hospitality industry. I am currently the Maitre d' of Dennis Foy Restaurant located downtown in Tribeca and 3-star restaurant serving New American Cuisine. My background runs the gamut of the New York restaurant industry from nightclubs to three star restaurants over the last 8 years. Through my experience I have been privy to a myriad of abuses from the hands of restaurant owners, who have no regard for their employees and are not monitored to treat their employees with respect or with their safety in mind. I have seen first hand or myself been victim to employers who do not pay their employees adequate rates or deny responsibility of payment outright and disgusting kitchens and restaurant bathrooms, where washing hands is the least of a health practice or concern. Restaurants whose ownership is most concerned with the bottom dollar than the bottom of the kitchen sink.

As an employer, I always strive to do the right thing. At minimum, I comply with the most basic of employment laws. Shouldn't we be able to rightfully expect other employers to do the same? It is a monstrous undertaking to run a restaurant – let alone doing it successfully – in New York City. Most restaurants shut their doors and kitchens within the first two years of opening. Costs are high and we are faced with a recession. Nonetheless, the restaurant industry is one of the fastest growing ever. There ARE many restaurants that make enormous profits. I salute those who are able to make a profit and obey the law. I have serious concerns about those who make a profit *by* breaking the law. It is the latter group whom I am forced to compete with – this is unfair competition at its ugliest.

These are the same employers who run filthy operations and do not give their workers adequate health and safety training. These are the employers whose staff feels cheated, and who do not take pride in ensuring proper health and safety standards in their workplaces. Their workers are either too angry or too scared to tell them they need some health and safety training or that a certain piece of food fell on the floor, and that a new item needs to be made. Employees are not the only ones to fall prey, with their sloppy practices, these employers disregard their diner's health—your health - every time you frequent or patron a restaurant with poor safety and health systems. Do NOT make the assumption that this occurs only in small, mom and pop restaurants—we are talking about some very well known, high priced establishments!

And when my competition gets to save costs by engaging in really poor practices, such as skimping on a worker's pay, or not providing the health and safety training that is so desperately needed, this gives the green light to other restaurants to do the same – it spreads an attitude that is so pervasive in this industry, one that says “if my neighbor is doing wrong and getting away with it, then so can I.”

I don't want to shut down my competition – competition is healthy; it keeps us on our toes and makes us strive to be that much better. I'm just asking that my competition play by the same rules that I have to play by. I'm also asking that the City take a meaningful look at those restaurants that continually treat the law as a joke. I am an employer, and as an employer, I would hope the city would pass this much needed legislation.

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Responsible Restaurant Act (Intro. #569)
Health Committee Hearing

31 March 2008
New York City Hall

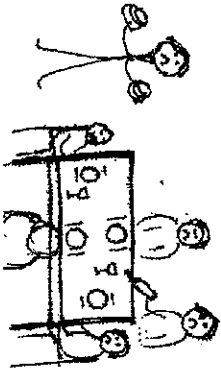
My name is Cecilia, I live in Queens and I am a restaurant worker. Thank you for giving me the chance to be heard.

My sketch explains it all. One side shows what we experience as restaurant workers and the other side shows what each restaurant worker dreams of. The American dream. It shows what we are striving for in the restaurant industry in New York.

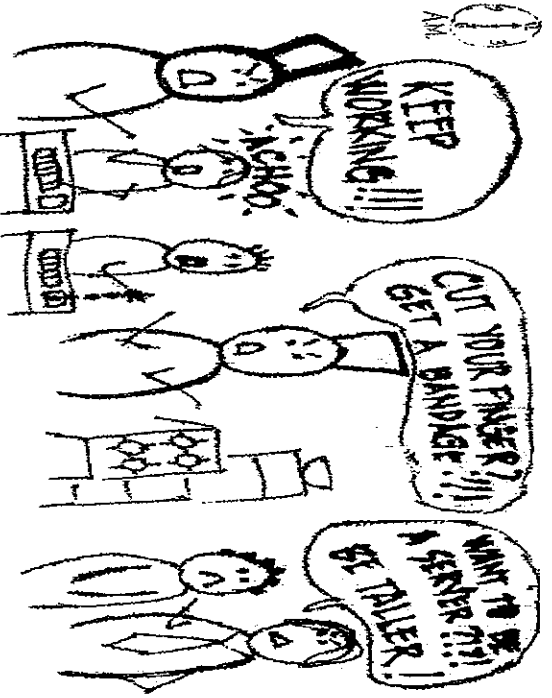
You will see the beauty and dramatic change one Act can do to the restaurant industry and economy of New York. You will see what it can do to restaurant workers, restaurant owners and restaurant consumers. You will see what it can do to achieve a happier, richer and healthier New York. And all these are in your hands.

As you decide on this Act, please remember each of the 165,000 restaurant workers in New York who will be greatly affected by your decision. Remember the 165,000 restaurant workers who have been striving to perform at their best, who have been hoping to be treated fairly and who deserve to be treated right. Remember all the responsible restaurant owners who do things right, that they may be recognized. Remember all restaurant owners who do not do things right, that through this Act, they may be given the chance to do what is right. Remember each tourist who visits to experience dining in New York. Remember the 8 million restaurant consumers who deserve nothing but the best from New York restaurants.

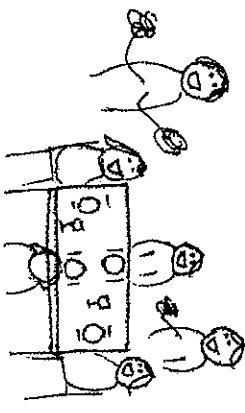
As you decide, please think of each of the New Yorker you represent, each New Yorker under your jurisdiction, each New Yorker you care for, who entrusts everything to you, confident that you will do what is right. Please do not fail us. Do not shatter our dream. Say YES to this Act. Help us move out of our current reality of an abusive industry into one that is ideal. PASS the Responsible Restaurant Act to turn our reality into our dream.



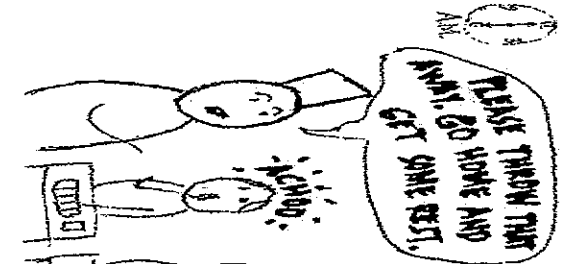
MEETING
DO IT!
SERVE!
IDOTS!
YOU'RE
WRONG
ENGLISH
ONLY!
MAKE
MONEY!



RESPONSIBLE RESTAURANT



MANAGE
INSPIRE
MOTIVATE
SERVE
PROMOTE
DEVELOP
TRAIN
VIRTUAL





**Testimony presented by Laine Romero-Alston
Director of Research and Policy, Community Development Project, Urban Justice Center
to the New York City Council Health Committee
March 31, 2008**

Good afternoon Chairman Rivera and members of the Health Committee. Thank you for the opportunity to testify today in support of Intro 569-A the Responsible Restaurant Act. My name is Laine Romero-Alston and I am the Director of Research and Policy for the Community Development Project of the Urban Justice Center. Over the past six years, I have worked closely with the New York City Restaurant Industry Coalition to conduct research about the state of the New York City restaurant industry. I have provided principal research support on two of their reports, including *Dining Out, Dining Healthy: The Link Between the Public Health and Working Conditions in New York City's Restaurant Industry*, which was released in April 2006. This report, which was based on two surveys of a total of 880 restaurant workers in New York City, was conducted between June 2003 and February 2005 and showed that restaurant employers who violate labor laws – for example, by paying less than the minimum wage or failing to pay overtime – present a serious danger to the public health. These employers are pursuing a “low-road” business strategy, which depends on putting enormous pressure on workers and cutting costs on training and wages. The result is a set of workplace practices that endanger food safety, and therefore, the public health.

In our research, we compared restaurant workers who experienced *many* labor law violations at their job to those who experienced *few* labor law violations and found that workers who experienced *many* labor law violations:

- Were six times more likely to report that they frequently had to cut corners because of time pressures, in ways that might have harmed the health or safety of customers.
- Were twice as likely not to receive health and safety training from their employer.
- Were three times more likely to report that they frequently had to perform several jobs at once.
- Were three times more likely to report that they frequently had to work when their

restaurant was understaffed.

- Were four times more likely to report that they frequently had to do a job for which they weren't trained.

These low-road business practices of not providing training, forcing workers to perform multiple jobs at once and understaffing were strongly correlated with reports by workers that they had to engage in unsafe food preparation, including:

- Serving dirty, expired, spoiled or leftover food to a customer;
- Handling food improperly; and
- Sneezing, coughing or spitting on food.

Once again, our research clearly shows how restaurant owners who choose to engage in low road business practices put all of our health at risk. Intro 569 would be an important move on the part of the City Council to protect the health of this city that so dearly loves to eat out.

Testimony to the New York City Council's Health Committee Re: Intro 569
Presented by: Jody Deyo, Restaurant Worker

Individuals that are unfamiliar with the New York City restaurant industry always express disbelief when they hear about the illegal activity that is commonplace in the industry. But what I and many others like me have come to learn through painful experience is that theft of wages and all manner of exploitation are not the exception but rather the rule in the New York City restaurant industry.

In the last seven years of working as a server in mostly upscale New York City restaurants I have learned some things about what I should and shouldn't expect. The first thing that I should expect is that some percentage of my tips will be stolen by restaurant ownership. What I should not expect is to be paid anything while training, to be paid for overtime, to receive an hourly wage, or to be paid on time.

Finally I learned to expect a sum total of zero help from the Department of Labor. I learned that there are laws in place to protect me from all the illegal things that have been done to me as an employee in the New York City restaurant industry, but I can't expect them to be enforced. Now it seems that the next stage of my learning will be to find out; should I or should I not expect this city's leaders to do something to rectify this situation.

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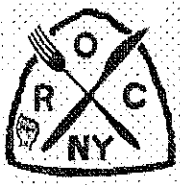
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275 SEVENTH AVE, 17th FLOOR
NEW YORK, N.Y. 10001
TEL: (212) 343-1771
FAX: (212) 343-7217

Written Testimony Presented by William Cerf, Restaurant Job-Seeker

My name is William Cerf and I'm from Brooklyn, NY. I am 61 years old and have spent all of my life in office administrative support. I want to make a career change and move into the restaurant industry. While I have a BA degree in Sociology, I have no restaurant experience and need to start "at the bottom" in order to learn the trade. By passing the Responsible Restaurant Act you will help ensure that workers like me are getting the pay and tips to which they are entitled. I would be much more comfortable in my job search when this becomes the law. New York City is the entertainment capital of the world - let's make it the fairness and decency capital of the world as well. Let's pass the Responsible Restaurant Act.



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